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BEFORE THE ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF Qwest
COMMUNICATIONS, INC'S
COMPLIANCE WITH § 271 OF THE
TELECOMMUNICATIONS ACT OF
1996

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) DOCKET NO. T-00000B-97-0238
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SUPPLEMENTAL REBUTTAL AFFIDAVIT OF

THOMAS R. FREEBERG

RE: CHECKLIST ITEM 1

QWEST COMMUNICATIONS

Arizona Corporation Commission

DOCKETED

MAY 16 2001

MAY 15, 2001

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Purpose of Affidavit

The purpose of this supplemental rebuttal affidavit is to address issues surrounding trunk forecasting by CLECs for local interconnection. Specifically, I am responding to the matters identified by CLECs in their trunk forecasting affidavits.

Executive Summary

Intervenors described very few trunk forecasting matters in their affidavits. Qwest expects that discussions between parties in other jurisdictions have reduced or eliminated serious concerns about trunk forecasting processes. For example, at the request of intervenors, Qwest has agreed to semi-annual rather than quarterly forecasting. Qwest has agreed to incorporate near term adjustments in projected demand at any time. Qwest has agreed to provide a group-specific forecast to the CLEC before and after the CLEC submits a forecast to Qwest. And finally, Qwest has agreed to delete the need for a deposit when a CLEC accepts Qwest's forecast.

AT&T pointed out in its comments that Qwest had neglected to file the most current trunk forecasting language from the SGAT. That language is attached here as Exhibit TRF-21 and it will be incorporated into the next

1 complete filing of the SGAT. Exhibit TRF-21 is a "redline" based on the SGAT
2 filed in Arizona on February 8, 2001.

3 Qwest did not find other intervenor filings on trunk forecasting that
4 should be responded to here. Qwest anticipates that the parties in a
5 collaborative workshop will address forecasting matters later this month. This
6 concludes my rebuttal.

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Index of Exhibits

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<u>DESCRIPTION</u>	<u>EXHIBIT</u>
SGAT section 7.2.2.8	TRF-21

7.2.2.8 LIS Forecasting

7.2.2.8.1 Both CLEC and Qwest shall work in good faith to define a mutually agreed upon forecast of LIS trunking.

7.2.2.8.2 Both Parties shall have the obligation to participate in joint planning meetings at quarterlysemi-annual intervals to establish trunk design and provisioning requirements. The Parties agree to provide mutual trunk forecast information to ensure end user call completion between the Parties' networks. Such forecasts shall be for LIS trunking which impacts the switch capacity and facilities of each Party. Qwest shall provide trunk group specific projections to the CLEC on or before the date of the joint planning meeting.

7.2.2.8.3 Switch capacity growth requiring the addition of new switching modules may require six months to order and install. To align with the timeframe needed to provide for the requested facilities, including engineering, ordering, installation and make ready activities, the Parties will utilize Qwest standard forecast timelines, as defined in the standard Qwest LIS Trunk Forecast Forms for growth planning. For capacity growth, Qwest will utilize CLEC forecasts and near-term demand submitted on Unforecast Demand Notification Forms to ensure availability of switch capacity.

7.2.2.8.4 Each Party will utilize the Forecast cycle outlined on the Qwest LIS Trunk Forecast Forms, which stipulates that forecasts be submitted on a quarterlysemi-annual basis. The forecast will identify trunking requirements for a two (2) year period. From the quarterlysemi-annual close date as outlined in the forecast cycle, the receiving Party will have one month to determine network needs and place vendor orders which may require a six (6) month interval minimum to complete the network build. Seven (7) months after submission of the forecast, Qwest will have the necessary capacity in place to meet orders against the forecast. For ordering information see Section 7.4. See also Section 7.2.2.8.6.

7.2.2.8.5 Both Parties will follow the forecasting and provisioning requirements of this Agreement for the appropriate sizing of trunks, and use of direct end office vs. tandem routing. See Section 7.2.2.1.3.

7.2.2.8.6 LIS Forecasting Deposits: In the event of a dispute regarding forecast quantities, where in each of the preceding 18 months trunks required is less than 50% of forecast, Qwest will make capacity available in accordance with the lower forecast.

7.2.2.8.6.1 Three weeks after a forecasting cycle, Qwest will provide a CLEC feedback in the form of a potentially lower forecast. In the event of a dispute regarding forecast quantities, where in each of the preceding 18 months, trunks required is less than 50% of forecast each month, Qwest will make capacity available in accordance with the higher forecast if CLEC provides Qwest with a deposit according to the following terms. Utilization here refers to the ratio of trunks required versus trunks forecast. As to the difference between the lower and higher forecast, Qwest reserves the right to require, prior to construction, a refundable deposit of up to one hundred percent (100%) of the trunk-group specific estimated cost to provision the new trunks, if CLEC's trunk state-wide average utilization over the prior eighteen (18) months is less than fifty percent (50%) of forecast each month. Qwest will return the deposit if CLEC's state-wide average trunk forecast to trunk usage (utilization) ratio exceeds fifty percent (50%) within six (6) months of the forecasting period to which the deposit applies. If CLEC does not achieve the fifty percent (50%) utilization within six (6) months, Qwest will retain a pro-rata portion of the deposit to cover its capital cost of provisioning. The pro-rata shall assume a full refund when the state-wide average utilization ratio meets or exceeds 50% for any one of the six-months following receipt of deposit. The pro-rata assumes half of the deposit is refunded when the highest state-wide average utilization ratio for any one of the six months after receipt of deposit is 25%. In the event Qwest does not have available facilities to provision interconnection trunking orders that CLEC forecasted and for which CLEC provided a deposit, Qwest will immediately refund a pro rata portion of the deposit associated with its facility shortfall. Ancillary trunk groups, such as mass calling, are excluded from the ratio.

7.2.2.8.7 Joint planning meetings will be used to bring clarity to the process. Each Party will provide adequate information associated with the Qwest LIS Trunk Forecast Forms in addition to its forecasts. No later than two weeks prior to the joint planning meeting, the Parties shall exchange information to facilitate the planning process. ~~During the joint planning meetings, bBoth Parties shall provide information on major network projects anticipated for the following year that may impact the other Party's forecast or Interconnection requirements. No later than two~~

~~weeks prior to the joint planning meetings, the Parties shall exchange information to facilitate the planning process.~~ Qwest shall provide CLEC a report reflecting then current spare capacity at each Qwest switch that may impact the interconnection traffic. Qwest shall also provide a report reflecting then current blocking of local direct and alternate final trunk groups, interconnection and non-interconnection alike. CLEC will be provided interconnection trunk group data on its own trunks. Qwest shall also provide a report reflecting tandem-routed interconnection trunking that has exceeded 512BHCCS. The information is proprietary, provided under non-disclosure and is to be used solely for interconnection network planning.

7.2.2.8.8 In addition to the above information, CLEC shall provide:

- a) Completed Qwest LIS Trunk Forecast Forms; and
- b) Any planned use of an alternate local tandem provider.

7.2.2.8.9 In addition to the above information, the following information will be available through the Local Exchange Routing Guide or the Interconnections (ICONN) Database. The LERG is available through Telcordia. ICONN is available through the Qwest Web site.

- a) Qwest Tandems and Qwest end offices (LERG);
- b)- CLLI codes (LERG);
- c)- Business/Residence line counts (ICONN);
- d)- Switch type (LERG or ICONN); and
- e) Current and planned switch generics (ICONN).

Qwest will notify a CLEC six months prior to LERG amendment, the anticipation of a new local tandem switch.

7.2.2.8.10 Qwest Network Disclosure of deployment information for specific technical capabilities (e.g., ISDN deployment, 64 CCC, etc.) shall be provided on Qwest's web site, <http://www.uswest.com/disclosures>.

7.2.2.8.11 When appropriate, Qwest will notify CLEC through the Qwest Trunk Group Servicing Request (TGSR) process of the need to take action and place orders in accordance with the forecasted trunk requirements. CLEC shall respond to the TGSR within ten (10) business days of receipt.

7.2.2.8.12 The following terms shall apply to the forecasting process:

7.2.2.8.12.1 CLEC forecasts shall be provided to Qwest as detailed in the standard Trunk Forecast Form;

7.2.2.8.12.2 CLEC forecasts provided to Qwest, information provided by CLEC to Qwest outside of the normal forecasting process to modify the forecast, and forecasting information disclosed by Qwest to CLEC shall be deemed Confidential Information and the Parties may not distribute, disclose or reveal, in any form, this material other than as allowed and described in subsections 7.2.2.8.12.3 and 7.2.2.8.12.4.

7.2.2.8.12.3 The Parties may disclose, on a need to know basis only, CLEC forecasts, information provided by CLEC to Qwest outside of the normal forecasting process to modify the forecast, and forecasting information disclosed by Qwest, to legal personnel, if a legal issue arises, as well as to network and growth planning personnel responsible for preparing or responding to such forecasts or forecasting information. In no case shall the aforementioned personnel who have access to such Confidential Information be involved in the Parties' retail marketing, sales or strategic planning. The Parties will inform all of the aforementioned personnel, with access to such Confidential Information, of its confidential nature and will require personnel to execute a nondisclosure agreement which states that, upon threat of termination, the aforementioned personnel may not reveal or discuss such information with those not authorized to receive it except as specifically authorized by law.

7.2.2.8.12.4 The Parties shall maintain confidential forecasting information in secure files and locations such that access to the forecasts is limited to the personnel designated in subsection 7.2.2.8.12.3 above and such that no other personnel have computer access to such information.

7.2.2.8.13 [Reserved for future use] 7.2.2.12. If a trunk group is consistently utilized (trunks required over trunks in service) at less than fifty percent (50%) of rated busy hour capacity each month of any consecutive three (3) month period, Qwest will notify CLEC of Qwest's desire to resize the trunk group. Such notification shall include Qwest's information on current utilization levels. If CLEC does not submit an ASR to resize the trunk group within thirty (30) calendar days of the written notification, Qwest may reclaim the unused facilities and rearrange the trunk group. When reclamation does occur, Qwest shall not leave the CLEC-assigned trunk group with less than twenty five percent (25%) excess capacity. Ancillary trunk groups are excluded from this treatment.

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BEFORE THE ARIZONA CORPORATION COMMISSION

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WILLIAM A. MUNDELL
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Commissioner

IN THE MATTER OF QWEST
CORPORATION'S
COMPLIANCE WITH SECTION 271 OF
TELECOMMUNICATIONS ACT OF 1996

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DOCKET NO. T-00000B-97-238

REBUTTAL AFFIDAVIT OF

LARRY B. BROTHERRSON
Re: Terms and Conditions
and BFR

QWEST CORPORATION

May 15, 2001

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IDENTIFICATION OF AFFIANT

My name is Larry B. Brotherson. I am employed by Qwest Corporation ("Qwest") as a director in the Wholesale Markets organization.

My business address is 1801 California Street, Room 2350, Denver, Colorado 80202.

In 1979, I joined Northwestern Bell Telephone Company. I have held several assignments within Northwestern Bell, and later within Qwest, primarily within the Law Department. Over the past 20 years, I have been a state regulatory attorney in Iowa, a general litigation attorney, and a commercial attorney supporting several organizations within Qwest. My responsibilities have included evaluating and advising the company on legal issues, drafting contracts, and addressing legal issues that arise in connection with specific products. With the passage of the Telecommunications Act of 1996 ("the Act"), I was assigned to be the attorney in support of the Interconnection Group. In that role, I was directly involved in negotiating with the CLECs contract language implementing various sections of the Act, including the Act's reciprocal compensation provisions. In 1999, I assumed my current duties as director of wholesale advocacy.

My current responsibilities include coordinating the witnesses for all interconnection arbitrations and for hearings related to disputes over interconnection issues. Additionally, I work with various groups within the Wholesale Markets

1 organization of Qwest to develop testimony addressing issues associated with
2 interconnection services.

3 I have two degrees: a Bachelor of Arts degree from Creighton University in 1970,
4 and a Juris Doctorate degree from Creighton University in 1973.

5 I have testified in the Sprint arbitration, Docket Nos. T02432B-00-0026 and
6 T01051B-00-0026

7 **PURPOSE OF AFFIDAVIT**

8 In this testimony I address the comments submitted by AT&T and WorldCom
9 regarding general terms and conditions, the Bona Fide Request ("BFR") process, and
10 the Special Request Process ("SRP"), within Qwest's Statement of Generally Available
11 Terms and Conditions ("SGAT").

12 As I explained in my affidavit of April 4, 2001, the SGAT is an offer for an
13 agreement between Qwest and any requesting CLEC. It sets forth the terms, conditions
14 and pricing under which Qwest will offer, for purposes of providing local
15 telecommunications services, network interconnection, access to unbundled network
16 elements ("UNEs"), ancillary services, and telecommunications services available for
17 resale within the geographical areas in which both parties are providing local exchange
18 service and for which Qwest is the incumbent Local Exchange Carrier ("ILEC"). A copy
19 of the SGAT is attached as Exhibit LBB 1.

1 there are substantial inducements that it do so, including Performance Indicator
2 Definitions ("PIDs") and the possibility of the FCC re-opening its approval of Qwest's
3 271 authority if there is proof of substantial nonconformance under Section 271(6) of the
4 Act.

5 Qwest's proposed SGAT provisions and its acknowledgement of the validity of
6 some of the proposals of AT&T and WorldCom in these comments provide a fair and
7 balanced means of resolving disputes between the parties, amending interconnection
8 agreements, and complying with the Act's pick-and-choose requirements, not only to
9 reflect changes in law but also to accelerate access by CLECs to new services offered
10 by Qwest.

11 Since I was involved in the first round of negotiations with MCI (now WorldCom)
12 and AT&T beginning in 1996, I know that most of WorldCom's proposals are based
13 upon its template agreement, which it used in those early negotiations. The world has
14 moved on, but WorldCom has not. WorldCom's proposed Section 20.1 (Network
15 Security) provides an excellent example. This section deals with network OSS
16 interfaces and is starkly out of date, as is evidenced by the references to 1996
17 standards. By contrast, Section 12 of the SGAT and Mr. James H. Allen's
18 Supplemental Testimony provide an up-to-date discussion and resolution of these
19 issues. It is also noteworthy that MCI agreed in negotiations with U S WEST (now
20 Qwest) and other ILECs to different language.

1 Also, unlike AT&T which redlined Qwest's language, WorldCom simply
2 juxtaposed its proposed boilerplate making it very difficult to make comparisons,
3 particularly since WorldCom referenced its own template sections, not the SGAT.
4 WorldCom also juxtaposed some provisions in the wrong place and dropped in others
5 that are not addressed in Qwest's SGAT. Consequently, Qwest may have inadvertently
6 failed to address some of WorldCom's issues and reserves the right to do so at the
7 Workshop. Furthermore, in all but a very few instances WorldCom failed to give any
8 justification whatsoever as to why the Commission should accept its language.
9 WorldCom simply states that its language is better. This bald assertion does not
10 provide a sufficient factual basis for this Commission to reject Qwest's language in favor
11 of that of WorldCom.

12 As with AT&T's comments, my affidavit will generally be organized to follow the
13 numerical sequence of Qwest's SGAT and all references in my affidavit will be to the
14 Sections of the Qwest SGAT unless otherwise indicated.

15 **SECTION 1.0 -- GENERAL TERMS**

16 WorldCom has suggested an introductory clause that is appropriate for a
17 template interconnection agreement rather than an SGAT. Since this document is an
18 SGAT, it becomes an interconnection agreement when a CLEC executes it and delivers
19 it to Qwest pursuant to Section 252(f)(1) of the Act. This concept has been incorporated
20 into the SGAT in Section 1.4. WorldCom has suggested a series of WHEREAS clauses
21 by way of preamble. While Qwest does not seriously quarrel with most of these

1 clauses, they are appropriate for a template interconnection agreement, not an SGAT.
2 Qwest does object to the references to ancillary services and the use of Combinations
3 of Network Elements for itself in the fourth WHEREAS clause and to the use of the
4 terms "Parity" and "third party" in the fifth clause. However, subject to working through
5 these issues, Qwest does not seriously object to including WHEREAS clauses. On the
6 other hand, WorldCom's proposed NOW THEREFORE clause is a statement of mutual
7 consideration appropriate to a template interconnection agreement but not an SGAT
8 and should not be included.

9 **A. Sections 1.2 and 1.3 (Offer of Services)**

10 Although neither AT&T nor WorldCom commented on Section 1.2, Qwest would
11 like to delete this section since it pertains to Qwest's template negotiations agreement
12 and not the SGAT. Similarly, Section 1.3, should be changed to refer to the SGAT
13 instead of an agreement. These changes are reflected in the following:

14 ~~1.2 If this document is being used as the basis for negotiations of an~~
15 ~~Interconnection Agreement, it is between _____, ("Competitive~~
16 ~~Local Exchange Carrier" or "CLEC") a _____ corporation and~~
17 ~~Qwest Corporation ("Qwest"), a Colorado corporation, pursuant to Section~~
18 ~~252(f) of the Telecommunications Act of 1996, for purposes of fulfilling~~
19 ~~Qwest's obligations under Sections 222, 251(a), (b), and (c), 252, 271,~~
20 ~~and other relevant provisions of the Act and the rules and regulations~~
21 ~~promulgated thereunder. Intentionally left blank.~~

22
23 1.3 This Agreement SGAT sets forth the terms, conditions and pricing |
24 under which Qwest will offer and provide to any requesting CLEC network
25 Interconnection, access to unbundled network elements, Ancillary
26 services, and Telecommunications Services available for resale within the

1 geographical areas in which both Parties are providing local exchange
2 service at that time, and for which Qwest is the incumbent Local Exchange
3 Carrier within the State of Arizona for purposes of providing local
4 Telecommunications Services. This Agreement SGAT is available for the
5 term set forth herein.

6 **B. Section 1.7 (Modifications to the SGAT)**

7 AT&T argues that this section is not in compliance with the Act. It then proposes
8 alternate language, which would virtually freeze Qwest's business in place to the benefit
9 of no one. The alternate language does not comply with the Act since Qwest has the
10 authority to submit changes to the SGAT. To address AT&T's concern, Qwest proposes
11 the following:

12 ~~1.7 Following the date this SGAT is approved or allowed to take effect,~~
13 ~~Qwest may file amendments to this SGAT, which shall be approved or~~
14 ~~permitted to take effect pursuant to the Schedule for Review set forth in~~
15 ~~Section 252(f) of the Act. At the time any amendment is filed, the section~~
16 ~~amended shall be considered withdrawn, and no CLEC may adopt the~~
17 ~~section considered withdrawn following the filing of any amendment, even~~
18 ~~if such amendment has not yet been approved or allowed to take effect.~~
19 ~~Any modification to the SGAT by Qwest will be accomplished through~~
20 ~~Section 252 of the Act~~

21
22 Furthermore, through my Supplemental Testimony, Qwest has proposed as
23 Section 1.7.1 a new amendment process for accelerated access to new services to
24 address CLEC concerns about speed to the market. Qwest is also proposing new
25 language at Section 1.7.2 to address concerns raised by AT&T under Section 5.30.

1 **C. Section 1.8 (Pick and Choose)**

2 AT&T expresses several concerns about Qwest's pick and choose process.
3 Qwest does not disagree with AT&T's statement of the law absent the hyperbole. AT&T
4 does not take issue with the SGAT language, which is not surprising since AT&T and
5 other CLECs have negotiated and agreed to this language in other state proceedings.
6 Rather, it questions Qwest's implementation of that language.

7 AT&T first takes offense at Qwest's policy of limiting CLECs' use of any chosen
8 provision to the remaining time that that provision would have existed under the original
9 agreement which contains the provision. Rather than being "ludicrous" as AT&T
10 indicates, Qwest's position is soundly based upon the FCC's decision in *In re Global*
11 *NAPs, Inc.*, CC Docket No. 99-154, FCC 99-199 (rel. Aug. 3, 1999). In that case,
12 Global Naps complained that Bell Atlantic-New Jersey would not allow it to opt into a
13 1996 interconnection agreement between Bell Atlantic—New Jersey and MFS. The
14 issue before the FCC was whether it should pre-empt the New Jersey Board because of
15 its alleged failure to take timely action on the recommendation of the arbitrator.
16 Because the Board did eventually take action, the FCC declined to do so. In making its
17 ruling, however, the FCC made a number of comments pertinent to the issue of pick
18 and choose and "opt-in" rights under Section 252(i) and the implementing FCC rules (47
19 C.F.R. § 51.809). In footnote 25, the FCC stated that there should be a streamlined
20 process for opting-in and went on to state:

1 In such circumstances, the carrier opting-into an existing agreement takes
2 all the terms and conditions of that agreement (or portions of the
3 agreement), including its original expiration date.

4 Clearly, not only is AT&T's proposed language not required, it is inconsistent with
5 the law.

6 AT&T moves on to complain about two examples of Qwest's actions which it
7 alleges demonstrate bad faith in the implementation of the provision. The first instance
8 cited relates to AT&T's request to be able to opt-into Section 7.2.2.9.1.1 of the SGAT so
9 that it would receive "blocking reports" behind tandem switches where it interconnects.
10 It has now been discovered that there was a fair amount of miscommunication between
11 the parties. Qwest believed that AT&T had really intended to ask for the reports
12 included in 7.2.2.8.7. Qwest and AT&T have now cleared up the confusion and the
13 companies will enter into an amendment incorporating 7.2.2.9.1.1 into the AT&T
14 contracts.

15 In the second instance cited by AT&T, AT&T wants to pick and choose specific
16 sections from the current Wyoming multi-state SGAT. Specifically, AT&T wants to pick
17 and choose Sections 7.1.1 through 7.1.2.5, which primarily focus on securing provisions
18 relating to the right to have a Single Point of Interconnection or Presence ("SPOP") in a
19 LATA. Qwest has asked AT&T to pick other sections from the SGAT that are
20 legitimately related to these provisions.

21 In contrast to what AT&T argues is arbitrary behavior, the legitimately related
22 requirement is expressly stated in Section 1.8, the pick-and-choose section of the

1 SGAT. It is also clearly set forth in the FCC's pick and choose discussion in
2 *Implementation of the Local Competition Provisions in the Telecommunications Act of*
3 *1996 Interconnection between Local Exchange Carriers and Commercial Radio Service*
4 *Providers*, First Report and Order on Local Competition, CC Docket No. 96-98 & 95-185
5 (rel. Aug. 8, 1996) ("First Report and Order") at ¶1315.

6 Perhaps more importantly, in upholding the FCC's pick-and-choose rules the
7 United States Supreme Court specifically cited the "legitimately related" concept:

8 The Commission has said that an incumbent LEC can require a
9 requesting carrier to accept all terms that it can prove are "legitimately
10 related" to the desired term. First Report & Order ¶ 1315. Section 252 (l)
11 certainly demands no more than that.

12 *AT&T Corp. v. Iowa Utilities Bd.*, 119 S. Ct. 721, 738 (1999)

13 AT&T is seeking to "pick and choose" language dealing with trunking throughout
14 an entire single LATA state. It is appropriate to include the language in Section
15 7.2.2.9.3.2 on separate trunking in the amended language because it is an integral part
16 of Qwest's SPOP offering and is designed to minimize the impact upon Qwest's network
17 which employs separate local and toll trunking.

18 To further support the language in the SPOP amendment, the SGAT language in
19 Section 7.2.2.9.6 on accessing the appropriate tandem switches is essential to ensure
20 the efficient use of Qwest's local and toll network so that none of Qwest's customers,
21 including the CLECs, will incur additional blocking.

1 While the terms of Qwest's SPOP offer are in dispute, it is important to look at the
2 language in Section 1.8, which has been agreed to by AT&T following negotiations. It is
3 prefaced by the phrase: "Because this SGAT is Qwest's standard contract offer. . ."
4 While these issues remain in dispute, the concepts included in these provisions are
5 Qwest's standard contract offer and Qwest is perfectly within its rights to insist that they
6 are legitimately related and must be included in the Amendment.

7 **SECTION 2.0 -- INTERPRETATION AND CONSTRUCTION**

8 **A. Section 2.1**

9 WorldCom does not comment on Section 2.1. My rebuttal testimony on this
10 section, therefore, is limited to the issues raised by AT&T. AT&T notes that the SGAT
11 references "other instrument[s] (including Qwest or other third party offerings, guides or
12 practices)," as well as statutes, regulations, rules, and tariffs. AT&T argues that Qwest
13 "should not be allowed to make unilateral changes" to "any document outside the SGAT
14 that Qwest controls including, but not limited to, tariffs, product descriptions, processes,
15 Technical Publications and methods and procedures," that would "affect CLECs'
16 obligations under the SGAT." AT&T Initial Comments on Forecasting, Bona Fide
17 Request Process and General Terms and Conditions ("AT&T Comments") at 15. AT&T
18 suggests that the problem could be solved "through a process by which CLECs are
19 provided notice and the opportunity to participate in all such changes" or by stating in
20 the SGAT that any changes to external documents after the Agreement is adopted are

1 only effective as to the Agreement if the CLEC consents to such changes. AT&T
2 Comments at 15.

3 To satisfy CLEC concerns in this area, Qwest has developed the Co-Provider
4 Industry Change Management Process ("CICMP"). James H. Allen discussed the
5 CICMP in depth in his Supplemental Affidavit filed May 11, 2001. In short, the CICMP
6 will allow CLECs to provide input regarding changes to Qwest's products and
7 processes, fostering the free flow of information and the participation of the CLECs in
8 changes to such documents.

9 Moreover, CLECs are provided notice and an opportunity to participate in any
10 change to a tariff. Tariffs are public documents subject to investigation and approval by
11 state commissions. CLECs, therefore, have ample opportunity to participate in any
12 changes to tariffs.

13 Because safeguards are there in place to ensure that CLECs are afforded an
14 opportunity to participate in any changes to external documents referenced in the
15 SGAT, there is no need to revise this aspect of the SGAT language. However, to
16 address the CLECs' concerns, Qwest has offered a new Section 2.3, which I described
17 in my Supplemental Testimony. This section basically states that to the extent there are
18 conflicts between these external documents and the SGAT, the SGAT will prevail.

19 In document MWS-1, WorldCom also proposes language regarding the
20 significance of the headings and numbering of the SGAT. Because WorldCom does not

1 cite any corresponding language from the SGAT, this is presumably a provision that
2 WorldCom determined was not included in Qwest's SGAT. In fact, Section 2.1 of the
3 SGAT contains a provision regarding the meaning and import of headings:

4 The headings used in this Agreement are inserted for convenience of
5 reference only and are not intended to be a part of or to affect the
6 meaning of this Agreement.

7 WorldCom's proposal, meanwhile, reads as follows:

8 The headings and numberings of Sections, Parts and Attachments in this
9 Agreement are for convenience only and will not be construed to define or
10 limit any of the terms in this Agreement or affect the meaning or
11 interpretation of this Agreement.
12

13 Although the language of the competing provisions is similar and WorldCom
14 offers no reason why its proposal should be adopted, Qwest is willing to revise the
15 SGAT to incorporate WorldCom's language with one exception. WorldCom's proposal
16 refers to "Parts, and Attachments" to the SGAT. The SGAT itself refers to "Exhibits" in
17 numerous places. The words "Parts, and Attachments" has no meaning in the SGAT.
18 Therefore, Qwest is willing to revise the SGAT as follows:

19 2.1 This Agreement ("Agreement") includes this Agreement and all
20 Exhibits appended hereto, each of which is hereby incorporated by
21 reference in this Agreement and made a part hereof. All references to
22 Sections and Exhibits shall be deemed to be references to Sections of,
23 and Exhibits to, this Agreement unless the context shall otherwise require.
24 The headings and numbering of Sections and Exhibits used in this
25 Agreement are inserted for convenience of reference only and will not be
26 construed to define or limit any of the terms in this are not intended to be a
27 part of or to affect the meaning of this Agreement or affect the meaning or
28 interpretation of this Agreement. Unless the context shall otherwise
29 require, any reference to any agreement, other instrument (including
30 Qwest or other third party offerings, guides or practices), statute,

1 regulation, rule or Tariff applies to such agreement, instrument, statute,
2 regulation, rule or Tariff as amended and supplemented from time to time
3 (and, in the case of a statute, regulation, rule or Tariff, to any successor
4 provision).

5 **B. Section 2.2**

6 **1. WorldCom Testimony**

7 WorldCom proposes four specific changes to Section 2.2 of the SGAT: (1)
8 adding "state rules, regulations, and laws to the definition of "Existing Rules", (2) stating
9 that the SGAT is "in compliance" with, rather than "based on", the Existing Rules; (3)
10 deleting the references to specific rulings "for more generic language", and (4) adopting
11 WorldCom's proposed additional language stating that any reference to a tariff is a
12 reference to the terms that existed on the date the Agreement became effective and,
13 absent the CLEC's consent and amendment of the Agreement, not any subsequent
14 modifications to the tariff. I will address each proposed change in turn.

15 Although it is unnecessary, Qwest is willing to add "state rules, regulations, and
16 laws" to the definition of "Existing Rules", and a statement that the Agreement is "in
17 compliance" with the Existing Rules. Both of those changes are shown below. With
18 respect to suggestion 3, WorldCom justifies its suggestion by noting that Section 2.2
19 "identifies some specific rulings, but obviously not all." WorldCom Testimony at 3. It
20 would be impossible to identify all rulings. Although WorldCom fails to offer an example
21 of "more generic language," Qwest is willing to delete the references to specific rulings.

1 Qwest sees no need to adopt WorldCom's proposed additional language
2 regarding subsequent modifications to tariffs. In support of its argument, WorldCom
3 argues that the Act gives CLECs the right to negotiate the rates, terms and conditions of
4 its interconnection agreements with incumbent LECs. "There is nothing in the federal
5 Act that even implies that this statutory right may be exercised only where the
6 incumbent has not filed tariffs for various telecommunications services or network
7 elements. In fact, Section 252 is the proverbial exception to the rule. It requires parties
8 to negotiate in a regulatory environment that has been otherwise strictly governed by
9 the 'filed rate doctrine.'" WorldCom Testimony at 3-4. WorldCom misses the point.
10 Qwest is not taking the position that a CLEC is only entitled to an interconnection
11 agreement where no tariff exists. Rather, the SGAT language on this issue recognizes
12 that both tariffs and interconnection agreements may co-exist. Also, the new Section
13 2.3 that Qwest has proposed in my Supplemental Testimony should ameliorate this
14 concern.

15 WorldCom further asserts:

16 WorldCom's right under the federal Act would be devoid of any meaning if
17 Qwest were permitted to simply cross-reference its filed state tariffs on the
18 subject. Allowing tariff prices and conditions to 'float' with the tariff would
19 allow the Qwest [sic] to enjoy an undue, improper and very nearly
20 unilateral control over a fundamental and critical component of the
21 interconnection agreement -- pricing. Defaulting to filed tariffs gives
22 Qwest the power to change the interconnection agreement with
23 WorldCom without WorldCom's consent or approval, thereby depriving
24 WorldCom of its lawful rights as well as the business certainty that is
25 derived from having fixed prices for the life of the contract.

1 WorldCom Testimony at 4 (footnotes omitted).

2
3 WorldCom's concerns should not affect the SGAT language. First, Section 2.3
4 addresses this concern. Second, the SGAT language applies to the extent that the
5 SGAT references tariffs. Obviously, the Agreement contains the terms and conditions
6 governing the parties' relationship. It makes sense to refer to the most recent versions
7 of tariffs because the tariffs often will reflect more updated technical or operational
8 information. To "freeze" the tariffs at the time of execution would be counterproductive.

9 Further, and perhaps more importantly, WorldCom drastically misstates the
10 ability of CLECs to participate in tariff proceedings. Tariffs are public documents that
11 are subject to investigation and approval by state commissions, particularly as they
12 concern costs and pricing. In my experience, cost dockets are some of the most
13 contentious, thoroughly litigated Commission proceedings, and CLECs are well
14 represented in such proceedings. This Commission is well aware of the substantial
15 time and effort that all parties, and the Commission, routinely spend in cost dockets.
16 Further, it is safe to say that state commissions often reach results regarding costs and
17 prices that are not what Qwest requested. It is patently absurd, therefore, for
18 WorldCom to claim that Qwest has "nearly unilateral control" over pricing and that
19 CLECs are deprived of their lawful rights to participate in these proceedings.

20 WorldCom also argues that "the tariffs litigated in such proceedings represent the
21 general rates, terms and conditions available to the population of Arizona CLECs. The
22 tariffs are neither intended nor designed to address the needs of individual CLECs with

1 particularity." WorldCom Testimony at 4. I would like to point out that the SGAT is a
2 Statement of *General* Terms and Conditions that are available to CLECs. It is not
3 designed to address the particular needs of individual CLECs. If a CLEC desires an
4 interconnection agreement that addresses its particular needs, it is free under Section
5 252 of the Act to negotiate an interconnection agreement with Qwest that contains
6 terms and conditions that specifically meet its needs. The purpose of these
7 proceedings is not to satisfy the individual needs of each CLEC; rather, it is to ensure
8 that Qwest provides *universal* terms and conditions that satisfy the Act. The SGAT
9 satisfies those general concerns, and so there is no reason to adopt WorldCom's
10 language.

11 2. AT&T Comments

12 AT&T argues that the SGAT should contain a "process" to apply where parties
13 interpret the change in law differently and where the parties disagree on how that
14 change is to be implemented, if at all. The SGAT already requires the parties to use the
15 alternative dispute resolution process if they cannot agree on implementing a change in
16 law. Because AT&T has provided no compelling reason to replace the language of
17 Section 2.2 as currently written, Qwest sees no need to revise it by incorporating the
18 changes suggested by AT&T.

19 Based on WorldCom's testimony, Qwest is willing to revise Section 2.2 of the
20 SGAT as follows:

1 2.2 The provisions in this Agreement are in compliance with and based,
2 in large part, on the existing state of the law, rules, regulations and
3 interpretations thereof, including but not limited to state rules, regulations,
4 and laws, as of the date hereof (the "Existing Rules"). Among the Existing
5 Rules are the results of arbitrated decisions by the Commission, which are
6 currently being challenged by Qwest or CLEC. Among the Existing Rules
7 are certain FCC rules and orders that are the subject of, or affected by,
8 the opinion issued by the Supreme Court of the United States in *AT&T*
9 *Corp., et al. v. Iowa Utilities Board, et al.* on January 25, 1999. Many of
10 the Existing Rules, including rules concerning which Network Elements
11 are subject to unbundling requirements, may be changed or modified
12 during legal proceedings that follow the Supreme Court opinion. Among
13 the Existing Rules are the FCC's orders regarding BOCs' applications
14 under Section 271 of the Act. Qwest is basing the offerings in this
15 Agreement on the Existing Rules, including the FCC's orders on BOC 271
16 applications. Nothing in this Agreement shall be deemed an admission by
17 Qwest concerning the interpretation or effect of the Existing Rules or an
18 admission by Qwest that the Existing Rules should not be vacated,
19 dismissed, stayed or modified. Nothing in this Agreement shall preclude
20 or estop Qwest or CLEC from taking any position in any forum concerning
21 the proper interpretation or effect of the Existing Rules or concerning
22 whether the Existing Rules should be changed, dismissed, stayed or
23 modified. To the extent that the Existing Rules are changed, vacated,
24 dismissed, stayed, or modified, then this Agreement and all contracts
25 adopting all or part of this Agreement shall be amended to reflect such
26 modification or change of the Existing Rules. Where the Parties fail to
27 agree upon such an amendment within sixty (60) days from the effective
28 date of the modification or change of the Existing Rules, it shall be
29 resolved in accordance with the Dispute Resolution provision of this
30 Agreement. It is expressly understood that this Agreement will be
31 corrected to reflect the outcome of generic proceedings by the
32 Commission for pricing, service standards, or other matters covered by
33 this Agreement. This Section shall be considered part of the rates, terms
34 and conditions of each Interconnection, service and network element
35 arrangement contained in this Agreement, and this Section shall be
36 considered legitimately related to the purchase of each Interconnection,
37 service and network element arrangement contained in this Agreement.

38 **C. Section 2.3**

39 Both AT&T and WorldCom comment on Section 2.3 of the SGAT. I will address
40 AT&T's comments first.

1 AT&T suggests that Qwest "add language that ensures extraneous terms and
2 conditions, which properly belong in the SGAT but are found in these other documents
3 [incorporated by reference in the SGAT], are non-binding unless incorporated into the
4 SGAT." AT&T Comments at 18. AT&T states that "[t]his comments [sic] mirrors AT&T's
5 comments regarding Section 2.1 above." AT&T Comments at 18. As described above,
6 Qwest is implementing the CICMP, which provides CLECs an opportunity to comment
7 on changes to certain Qwest documents. There is no need to adopt such language.

8 WorldCom goes a step further than AT&T and suggests language to include in
9 the SGAT. In particular, WorldCom offers the following revisions to Section 2.3, with
10 WorldCom's proposed changes in bold and the omitted language in brackets and
11 underlined:¹

12 In cases of conflict between Qwest's 1.) IRRG product descriptions,
13 2.) methods and procedures, [or a] 3.) Technical Publications or 4.)
14 any other Qwest information or documentation, including but
15 not limited to Product Notifications, that purport to address
16 matters that are addressed in this Agreement, and this
17 Agreement, then the rates, terms and conditions of this Agreement
18 shall prevail over such IRRG product descriptions, methods and
19 procedures, [or a] Technical Publications or any other Qwest
20 documentation. In addition, no Qwest documentation shall
21 add terms and conditions that are not already contained in this
22 Agreement. If Qwest believes that any rate, term or condition
23 contained in this Agreement needs further clarifications,
24 Qwest will submit such proposed clarifications to CLEC under
25 the co-provider change management process ("CICMP")
26 described in Section ____ of this Agreement for negotiation and

¹ WorldCom also suggests that Section 5.24, "Referenced Documents," be deleted for the same reasons articulated in WorldCom's testimony with respect to Section 2. WorldCom's concerns, however, have been addressed by development and implementation of CICMP.

1 **approval. In the event, Qwest and CLEC cannot agree, Qwest**
2 **may seek to amend this agreement if it desires to clarify the**
3 **rates, terms or conditions of this Agreement. Further, in the**
4 **event, Qwest and CLEC cannot agree, it shall be resolved in**
5 **accordance with the Dispute Resolution provision of this**
6 **Agreement. In no event shall Qwest modify this Agreement or**
7 **any document referenced in this Agreement without CLEC**
8 **approval or Commission approval.**

9
10 Although Qwest is willing to adopt some of the language suggested by
11 WorldCom, Qwest cannot agree to many aspects of the provision. For example, the
12 term "any other Qwest information or documentation, including but not limited to Product
13 Notifications" is too broad to include in an agreement like the SGAT. The point of
14 Section 2.3 is to *specifically* identify the potential documents that could conflict with the
15 SGAT. Therefore, in keeping with that theme, Qwest is willing to add "Product
16 Notifications" to the list of documents, but not to expand the list to include any
17 information or documentation. Further, the term "that purport to address matters that
18 are addressed in this Agreement" is too vague to provide any real guidance. Qwest will
19 revise the SGAT to include documents that "pertain to offerings in this SGAT." Finally,
20 as discussed above, Qwest has developed the CICMP to allow CLECs to have input
21 into changes to certain Qwest documents. The CICMP has been described in James
22 Allen's supplemental affidavit filed in these proceedings, is included in Section 12 of the
23 SGAT, and addresses WorldCom's concerns about amending documents that are
24 referenced in the SGAT.

25 Accordingly, Qwest is willing to revise the SGAT as follows:

1 2.3 In cases of conflict between Qwest's IRRG PCAT, product
2 descriptions, methods and procedures, or a Technical Publications, or
3 Product Notifications that pertain to offerings in this SGAT, and this
4 AgreementSGAT, then the rates, terms and conditions of this
5 AgreementSGAT shall prevail over such IRRGPCAT, product
6 descriptions, methods and procedures, a Technical Publications, or
7 Product Notifications. Qwest will submit proposed clarifications to these
8 documents under the co-provider change management process ("CICMP")
9 described in Section 12 of this SGAT.

10 11 **SECTION 3.0 -- IMPLEMENTATION SCHEDULE**

12 Both WorldCom and AT&T have expressed concerns about the implementation
13 schedule requirements in this section. Since these schedules have not been negotiated
14 in practice, Qwest is removing this provision. To better describe the contents of this
15 section, Qwest has change the header to "CLEC Information."

16 Both companies also comment on the CLEC Questionnaire. WorldCom notes
17 that since the parties need to work together to complete the questionnaire, Qwest
18 should do so within one day of an oral request. Reasonable business people need to
19 coordinate schedules to set up meetings, and Qwest commits to doing so.

20 AT&T states that Qwest requires it to sign the CLEC Questionnaire. Qwest does
21 not. AT&T also protests having to update the questionnaire. Qwest has been working
22 to address concerns that CLECs have expressed about the questionnaire, particularly
23 for new services. Qwest has broken down the questionnaire into product-specific
24 pieces. Current product specific questionnaires can be found at
25 <http://www.qwest.com/wholesale/clecs/negotiations.html>. The questionnaires ask the
26 CLECs for its identification code, e.g., Access Customer Name Abbreviation (ACNA)

1 information and contacts for billing, information if it is not currently receiving a variety of
2 reports, and information as to how it is accessing Qwest's Operation Support Systems
3 (OSS). Qwest needs the information contained in the Questionnaire to establish its
4 ordering and billing processes to ensure that the CLEC can order and receive the
5 product in a timely manner.

6 Qwest uses the new customer CLEC Questionnaire for the purposes listed in
7 Section 3.2. In order to facilitate CLECs' entry into the local market, Qwest has begun
8 working with the CLECs on this questionnaire prior to the parties having executed an
9 interconnection agreement. The removal of the word "Thereupon" in Section 3.1
10 reflects this process change.

11 AT&T wants the elements of the CLEC Questionnaire to be specifically identified
12 in the SGAT. This is similar to the arguments that both AT&T and WorldCom make
13 regarding documents in Section 2, and Qwest's response to that section is equally
14 applicable here.

15 The new Section 3 would read as follows:

16
17 Section 3.0 - IMPLEMENTATION SCHEDULE CLEC INFORMATION
18

19 3.1 Except as otherwise required by law, Qwest will not provide or
20 establish Interconnection, unbundled network elements, ancillary services
21 and/or resale of Telecommunications Services in accordance with the
22 terms and conditions of this Agreement prior to CLEC's execution of this
23 Agreement. ~~Thereupon,~~ The Parties shall complete Qwest's "CLEC

1 Questionnaire," and ~~negotiate an Interconnection implementation~~
2 ~~schedule as it applies to CLEC's obtaining of Interconnection, unbundled~~
3 ~~network elements, ancillary services, and/or resale of Telecommunications~~
4 ~~Services hereunder.~~

5
6 3.2 Prior to placing any orders for services under this Agreement, the
7 Parties will jointly complete Qwest's "CLEC Questionnaire." This
8 questionnaire will then be used to:

9
10 Determine geographical requirements;

11 Identify CLEC Identification Codes;

12 Determine Qwest system requirements to support CLEC's specific activity;

13 Collect credit information

14 Obtain billing information;

15 Create summary bills;

16 Establish input and output requirements;

17 Create and distribute Qwest and CLEC contact lists; and Identify CLEC
18 hours and holidays.

19 ~~3.3 Prior to placing any orders for services under this Agreement, the~~
20 ~~Parties will finalize an Interconnection implementation schedule. Subject~~
21 ~~to the terms and conditions of this Agreement, each Party shall exercise~~
22 ~~reasonable efforts to adhere to the interconnection implementation~~
23 ~~schedule.~~

24 ~~3.4 Intentionally Left Blank~~

25 **SECTION 4.0 -- DEFINITIONS**

26 Both AT&T and WorldCom note that my Affidavit filed with the Commission on
27 April 4, 2001 did not include Section 4 of the SGAT, the section titled "Definitions."
28 AT&T requests that Qwest file the most-recent definitions section. WorldCom goes a

1 step further and includes its own definitions section, which WorldCom asserts contains
2 "many definitions that are omitted in Qwest's SGAT." WorldCom Testimony at 7, lines
3 18-19. WorldCom also asserts that the Commission should replace Qwest's definition
4 of any term with WorldCom's definition if that definition "has not been previously agreed
5 upon, and has not been discussed." *Id.*

6 Attached to my Affidavit as a part of Exhibit LBB-1 is Section 4 of Qwest's SGAT.
7 This exhibit contains the definitions of the terms found in the SGAT and includes all
8 revisions that were agreed to in the other workshops. If the CLECs have any issues or
9 concerns with the definitions or other changes need to be made, the parties can discuss
10 those issues during the upcoming General Terms and Conditions Workshop. This
11 satisfies the concerns raised by AT&T relating to the SGAT definitions.

12 WorldCom's proposal makes no sense and should be rejected. Contrary to
13 WorldCom's suggestion, it is not appropriate to replace any SGAT definition with
14 WorldCom's definition simply because a definition has not been discussed or agreed
15 upon. WorldCom offers no explanation why its definitions should be adopted and the
16 SGAT definitions rejected. In fact, WorldCom's only justification for its position is that its
17 definition section "contains many definitions that are omitted in Qwest's SGAT."
18 WorldCom at 7, lines 18-19. WorldCom does not describe or even list those "omitted"
19 definitions; indeed, WorldCom's proposal does not compare WorldCom's proposed
20 language with the language of the SGAT, so there is no efficient way of knowing how
21 the two compare. WorldCom should not be allowed to simply insert the definition

1 section from its "model interconnection agreement" into these proceedings without any
2 explanation or support. The purpose of these workshops is to discuss Qwest's SGAT,
3 not WorldCom's "model interconnection agreement."

4 **SECTION 5.0 -- TERMS AND CONDITIONS**

5 **A. Section 5.1 General Provisions**

6 WorldCom has juxtaposed its WHEREAS clauses discussed above with Section
7 5.1 of the SGAT. Since these provisions cover different subjects and WorldCom has
8 given no justification as to why the SGAT provisions should not be accepted, Section
9 5.1 of the SGAT should be retained.

10 **B. Section 5. Term of Agreement**

11 Section 5.2 addresses the term of the Agreement, including the effective date
12 (Section 5.2.1), termination of the Agreement (Section 5.2.2), and the ability of the
13 CLEC to obtain services under the terms and conditions of a then-existing agreement at
14 the conclusion of the two-year term (Section 5.2.2.1).

15 AT&T's only suggested revision to this language is a modification of Section
16 5.2.2.1 that permits the CLEC to replace the SGAT as an interconnection agreement
17 prior to the end of the two-year term of the agreement if the CLEC so chooses. AT&T
18 argues that such a modification is consistent with Section 252(i) of the Act. Qwest
19 agrees with AT&T's suggestion and has stricken SGAT Section 5.2.2.1 accordingly.

1 Although WorldCom does not offer any testimony regarding Section 5.2, in its
2 comparison of Qwest and WorldCom language it provides (without comment) an entirely
3 new section entitled "Section 3. Term and Termination." WorldCom's proposed
4 language is unacceptable for a number of reasons.

5 First, Section 3.1 of the WorldCom proposal inappropriately limits the ability of
6 either party to request a stay of approval of the Agreement. ("Neither Party may seek a
7 stay of the Commission/Board's approval of this Agreement.") While the circumstances
8 in which such a request may arise are undoubtedly rare, WorldCom's suggested
9 language places an arbitrary limit upon procedural rights that may exist under State law.
10 Moreover, should a party make such a request, the non-moving party will be fully
11 protected by its right to oppose that motion pursuant to State law and the Constitution.
12 Accordingly, the proposed addition should not be made.

13 Second, WorldCom seeks a term of three years rather than two years. (AT&T,
14 by contrast, concurs with the two-year term contained in Qwest's SGAT.) In the
15 telecommunications industry, three years is an unreasonably long term for an
16 interconnection agreement. Conditions and circumstances simply change too quickly
17 for the parties to reasonably expect that their relationship can remain static for such a
18 period. The SGAT's proposed two-year term is more realistic under the existing
19 conditions of this rapidly changing industry.

20 Third, Section 3.1 states that "No earlier than 120 days before the expiration of
21 the Initial Term, either Party may request that the Parties commence informal

1 negotiations to replace this Agreement." By contrast, the Qwest SGAT states that a
2 Party may terminate the Agreement on 160 days notice, "which will be the starting point
3 for the one hundred sixty (160) day negotiation window under Section 252 of the Act."
4 Qwest's language is derived from, and consistent with, the Act itself, which stipulates a
5 160-day negotiation window. WorldCom's proposed 120-day negotiation window is
6 inconsistent with the time frame set forth in the Act.

7 Fourth, WorldCom's proposed Section 3.2, which addresses a CLEC's right to
8 terminate the Agreement, is unacceptable on a number of grounds. The language
9 improperly provides the CLEC a unilateral right to terminate the agreement. By
10 contrast, Qwest's language appropriately provides a bilateral right of termination. In
11 addition, the 30-day notice period for termination fails to accommodate the replacement
12 of the parties' existing interconnection agreement. Qwest's SGAT, by contrast, ensures
13 that a termination provides 160 days' notice, a period which corresponds with the period
14 for the negotiation of a replacement agreement.

15 Fifth, WorldCom's proposed Sections 3.3, 3.4, and 3.6 appear to address issues
16 that have nothing to do with the term of the agreement, but which are more properly
17 addressed in other sections of the SGAT. Sections 3.3 and 3.6 address remedies for
18 breach, which are addressed by Section 5.18 of Qwest's SGAT, "Dispute Resolution."
19 Section 3.4 addresses nonpayment, which is addressed by Section 5.4 of Qwest's
20 SGAT.

1 Finally, WorldCom's proposed Section 3.5 is unacceptable. The first sentence
2 needlessly (and confusingly) states that the parties will comply with their obligations to
3 provide interconnection under the Act notwithstanding the termination of the Agreement.
4 In fact, the Act provides a mechanism for providing interconnection by means of such
5 agreements. As noted above, Qwest's SGAT -- in contrast to WorldCom's proposed
6 language -- ensures that an existing agreement is replaced whenever it is terminated.
7 The second sentence, requiring Qwest "to provide for an uninterrupted transition of
8 services" upon termination, is unclear and in any case is already addressed by Qwest's
9 SGAT, as set forth above.

10 For these reasons, WorldCom's proposal to replace Section 5.2 of the Qwest
11 SGAT with its Section 3 should be rejected.

12 Finally, Qwest proposes revision of Section 5.2.1, which should be deleted in part
13 because the language derives from a template negotiated Agreement, not an SGAT.
14 The language should instead state:

15 5.2.1 ~~When this document is used for purposes of negotiating and~~
16 ~~Interconnection Agreement, t~~This Agreement shall become effective upon
17 ~~Commission approval, the date set forth in Section 1 pursuant to Sections~~
18 ~~251 and 252 of the Act. This Agreement is binding upon the Parties upon~~
19 ~~the Effective Date and for a term of two years and shall terminate on~~
20 _____.

C. Section 5.3 Proof of Authorization

Both AT&T and WorldCom filed testimony regarding Proof of Authorization. I will address AT&T's comments first. Qwest's intention in filing its proposed Proof of Authorization language was to mirror the FCC provisions. AT&T points out that the FCC rules in 47.C.F.R. 64.1120 and 64.1140 already address Proof of Authorization and have provided counter language. Qwest notes that 64.1120 (b) incorporates local exchange service, into the FCC rules and 64.1140(a) provides for carrier liability for slamming when a carrier fails to comply with the procedures proscribed in the rules. Accordingly, Qwest agrees to AT&T's proposed language with the addition of the change in 5.3.2 to give the intent of AT&T's language.

~~5.3.1 Where so indicated in specific sections of this Agreement, eEach Party shall be responsible for obtaining and having in its possession Proof of Authorization ("POA") as required by applicable federal and state law, as amended from time to time. POA shall consist of documentation of the end user's selection of its local service provider. Such selection may be obtained in the following ways:~~

~~5.3.1.1 The end user's electronic or written Letter of Authorization.~~

~~5.3.1.2 The end user's electronic authorization by use of an 8XX number.~~

~~5.3.1.3 The end user's oral authorization verified by an independent third party (with third party verification as POA).~~

~~5.3.2 The Parties shall make POAs available to each other upon request in accordance with applicable laws and rules. A charge of \$100.00 will be assessed if the POA cannot be provided supporting the change in service provider. If there is a conflict between the end user designation and the other Party's written evidence of its authority, the Parties shall honor the designation of the end user and change the end user back to the previous service provider.~~

5.3.2 The Parties shall make POAs available to each other upon request in accordance with all applicable laws and rules and shall be subject to any penalties contained therein.

WorldCom also objects because the FCC rules address this matter. By accepting AT&T's language, Qwest should have addressed WorldCom's concerns as well. WorldCom also objects to proposed penalties. However, the very FCC rules that WorldCom relies upon in their testimony also provide for penalties. If AT&T's language is used, any FCC rules regarding penalties would apply to all parties.

D. Section 5.4 Payment

Both WorldCom and AT&T address Section 5.4. They both ignore the fact that this provision is reciprocal, and thus the items that they contest work in their favor when Qwest is paying the CLECs, as for reciprocal compensation. WorldCom proposes a very scaled down version of a payment section that would leave Qwest without adequate remedies when CLECs habitually dispute bills with little or no justification and fail to make timely payments. As usual, WorldCom provides no justification for its proposal.

First, I would like to make a few observations regarding AT&T's comments, in which it uniformly seeks to extend the time before Qwest can take remedial action when a CLEC is not paying its bills. It has been Qwest's experience that the longer it waits before taking appropriate remedial action, the less likely it is are to eventually receive payment. Also, CLECs receive more than sufficient notice from Qwest that actions must be taken if Qwest does not receive payment. This notice includes an initial call on

1 day 31, a first collection letter on day 35, and a final collection call and letter on day 42.
2 On day 56, Qwest sets end user transfer requirements and will not disconnect the
3 service associated with a particular end user until user transfers to a new provider have
4 occurred.

5 In its comments on Section 5.4.2, AT&T proposes to extend the time before
6 Qwest can discontinue processing orders when CLECs fail to make payments to 90
7 days, rather than the 30 days provided in the SGAT. Qwest disagrees with AT&T's
8 proposal that it must wait 90 days before it can take action. Qwest is entitled to
9 payment for services rendered on time and to take remedial action if risk is apparent.
10 Under Qwest's proposal, an invoice is not due and payable until 30 days after its date
11 and Qwest cannot take action until 30 days from then. Since Qwest rendered its
12 services in the month before the date of the invoice under its own proposal, it cannot
13 take action until nearly three months after it actually provided services. AT&T would
14 extend that period by another two months, thereby significantly increasing Qwest's
15 exposure to uncollectibles.

16 Secondly, AT&T would require Qwest to seek permission from the Commission
17 prior to discontinuing processing of orders. Qwest does notify the Commission before
18 taking action. However, permitting a CLEC to continue to incur debts for months before
19 Qwest could take appropriate actions to protect itself is not reasonable. AT&T would
20 increase Qwest's financial exposure even further by requiring it to give the CLEC

1 another ten-day notice if it has not discontinued processing orders within ten days from
2 the date specified on the notice.

3 Furthermore, if the CLEC has valid, good faith disputes about its bill, it can utilize
4 the dispute resolution process set forth in Section 5.4.4 of the SGAT. While disputing
5 billed amounts, the CLEC is not required to pay those amounts.

6 Qwest does not object to AT&T's addition of charges incurred "under this
7 Agreement" or its last sentence, which allows the CLEC to take other legal actions.

8 AT&T proposes similar changes to Section 5.4.3., which provides that Qwest
9 may disconnect services for failure by the CLEC to make full payment, less any
10 disputed amounts, within 60 days of the due date on the CLECs bill. AT&T proposes to
11 add another 60 days (120 days after the due date) before complete disconnection.
12 With this proposal, AT&T would be guaranteeing Qwest, at minimum, a six-month
13 revenue loss. Again, AT&T would increase Qwest's financial exposure even further by
14 requiring a second ten-day notice if Qwest has not disconnected within ten days of the
15 date for disconnection specified in the notice. AT&T also again suggests that Qwest
16 must obtain Commission approval before disconnection. Qwest does notify the
17 Commission before taking action. However, Qwest should not be delayed in taking
18 appropriate steps to protect itself from continuing to incur financial losses while the
19 Commission considers the matter of disconnection. As noted above, the CLEC with
20 valid disputes regarding its bill, can seek resolution under Section 5.4.4. Also in order
21 to avoid disruption to its end-users' service, CLEC agrees in Section 5.4.9 of the SGAT

1 to give it customers notice of the pending disconnection so that they can make other
2 arrangements for service. And as noted above, Qwest works with the CLEC regarding
3 the transfer.

4 As with 5.4.2 above, Qwest has does not object to the addition of the words
5 "under this Agreement" or the addition of the last sentence. Qwest does, however,
6 object to AT&T's attempt to have the wholesale discount applied to the reconnection
7 charge. Qwest does not avoid any costs in reconnecting the customer.

8 The revised Section 5.4 would read as follows:

9 5.4.1 Amounts payable under this Agreement are due and payable within
10 thirty (30) calendar days after the date of invoice, or within twenty (20)
11 days after receipt of the invoice, whichever is later. If the payment due
12 date is not a business day, the payment shall be made the next business
13 day.

14 5.4.2 Qwest may discontinue processing orders for the failure of CLEC to
15 make full payment, less any disputed amount as provided for in Section
16 5.4.4 of this Agreement, for the services provided under this Agreement
17 within thirty (30) days of the due date on CLEC's bill. Qwest will notify
18 CLEC in writing at least ten (10) days prior to discontinuing the processing
19 of orders. If Qwest does not refuse to accept additional orders on the date
20 specified in the ten (10) days notice, and CLEC's non-compliance
21 continues, nothing contained herein shall preclude Qwest's right to refuse
22 to accept additional orders from the non-complying CLEC without further
23 notice. For order processing to resume, CLEC will be required to make
24 full payment of all past and current charges under this Agreement.
25 Additionally, Qwest may require a deposit (or additional deposit) from
26 CLEC, pursuant to this section. In addition to other remedies that may be
27 available at law or equity, CLEC reserves the right to seek equitable relief,
28 including injunctive relief and specific performance.

29 5.4.3 Qwest may disconnect any and all services for failure by CLEC to
30 make full payment, less any disputed amount as provided for in Section
31 5.4.4 of this Agreement, for the services provided under this Agreement

1 within sixty (60) days of the due date on CLEC's bill. CLEC will pay the
2 Tariff charge required to reconnect each resold end user line disconnected
3 pursuant to this paragraph. Qwest will notify CLEC in writing at least ten
4 (10) business days prior to disconnection of the service(s). In case of
5 such disconnection, all applicable charges, including termination charges,
6 shall become due. If Qwest does not disconnect CLEC's service(s) on the
7 date specified in the ten-(10) day notice, and CLEC's noncompliance
8 continues, nothing contained herein shall preclude Qwest's right to
9 disconnect any or all services of the non-complying CLEC without further
10 notice. For reconnection of service to occur, CLEC will be required to
11 make full payment of all past and current charges under this Agreement.
12 Additionally, Qwest will request a deposit (or additional deposit) from
13 CLEC, pursuant to this section. Qwest agrees, however, that the
14 application of this provision will be suspended for the initial three (3) billing
15 cycles of this Agreement and will not apply to amounts billed during those
16 three (3) cycles. In addition to other remedies that may be available at law
17 or equity, CLEC reserves the right to seek equitable relief, including
18 injunctive relief and specific performance.

19
20 AT&T proposes to insert "less disputed amounts" in Section 5.4.6 which would
21 mean that these amounts could not be taken into account when determining deposit
22 requirements. Deposits offer Qwest some security that bills will be paid and in this
23 context, Qwest should be entitled to consider the entire bill.

24 E. Section 5.5 Taxes

25 SGAT Section 5.5 addresses payment of taxes. AT&T contends that this
26 provision is "one sided" because it "seem[s] to require that virtually all taxes be paid by
27 the purchaser (i.e., CLEC)." This is not correct. Section 5.5 clearly states that the Party
28 purchasing services under the Agreement shall pay or be responsible for any applicable
29 taxes "levied against or upon such purchasing Party." It does not impose any
30 obligations of payment beyond those required by law. Thus, AT&T's general concern

1 about CLECs paying for "virtually all taxes" is misplaced; Qwest's SGAT requires no
2 more than is required by applicable law.

3 Qwest agrees with AT&T that the intent of Section 5.5 is (and should be) to
4 require the party who is responsible under applicable law or tariff to pay any given tax.
5 AT&T's language simply appears to be a different way of stating what Qwest's provision
6 already provides. Thus, AT&T's proposal is largely acceptable. However, Qwest
7 modifies AT&T's proposal to clarify that each of the Parties has the right to pass tax
8 liability to the purchaser of services where it is legally entitled to do so.

9 AT&T also proposes language that would clarify that "Each Party is responsible
10 for any tax on its corporate existence, status, or income," and Qwest agrees with this
11 clarification.

12 WorldCom provides neither commentary nor a redline of Qwest's SGAT 5.5, but
13 attaches a "Section 26. Taxes" which is evidently WorldCom's proposed replacement of
14 SGAT 5.5. WorldCom provides no rationale for its proposal, nor does it suggest any
15 respects in which the Qwest SGAT 5.5 is inadequate. Moreover, WorldCom has in the
16 past adopted contract language virtually identical to the language contained in Qwest
17 SGAT 5.5. Last year, for example, WorldCom adopted an arbitrated agreement

1 between MCIMetro and Verizon for the State of Massachusetts, which contains
2 language very similar to Qwest SGAT 5.5.²

3 In any case, the concepts that MCI seeks to incorporate are already incorporated
4 by the Qwest and AT&T versions of SGAT 5.5. WorldCom simply phrases the
5 obligations in terms of the each Party's responsibilities, rather than reciprocal
6 obligations. However, Qwest has incorporated, with slight modification, WorldCom's
7 suggestion that the SGAT also address the situation in which one Party seeks to
8 contest the application of a tax collected by the other Party. Under the proposed
9 modification to Section 5.5.1, each Party agrees to cooperate with the other Party when
10 such a contest occurs, and to reimburse the other Party in appropriate circumstances.

11 ~~5.5.1 Each Party purchasing services hereunder shall pay or otherwise~~
12 ~~be responsible for all Any federal, state, or local sales, use, excise, gross~~
13 ~~receipts, transaction or similar taxes, fees or surcharges resulting from the~~
14 ~~performance of this Agreement shall be borne by the Party upon which the~~
15 ~~obligation for payment is imposed under applicable law, even if the~~
16 ~~obligation to collect and remit such taxes is placed upon the other Party.~~
17 ~~However, where the selling Party is permitted by law to collect such taxes,~~
18 ~~fees or surcharges from the purchasing Party, such taxes, fees or~~
19 ~~surcharges shall be borne by the Party purchasing the services. levied~~
20 ~~against or upon such purchasing Party (or the providing Party when such~~
21 ~~providing Party is permitted to pass along to the purchasing Party such~~
22 ~~taxes, fees or surcharges). Each Party is responsible for except for any~~
23 ~~tax on either its Party's corporate existence, status or income. Whenever~~
24 ~~possible, these amounts shall be billed as a separate item on the invoice.~~
25 ~~To the extent a sale is claimed to be for resale tax exemption, the~~
26 ~~purchasing Party shall furnish the providing Party a proper resale tax~~
27 ~~exemption certificate as authorized or required by statute or regulation by~~

² WorldCom adopted the arbitrated interconnection agreement between MCIMetro and Bell Atlantic-Massachusetts originally approved by the Massachusetts PUC November 1, 1998. WorldCom subsequently adopted this agreement, which was filed March 22, 2000 and approved June 5, 2000.

1 the jurisdiction providing said resale tax exemption. Until such time as a
2 resale tax exemption certificate is provided, no exemptions will be applied.
3 If either Party (the "contesting Party") contests the application of any tax
4 collected by the other Party (the "collecting Party"), the collecting Party
5 shall reasonably cooperate in good faith with the contesting Party's
6 challenge, provided that the contesting Party pays any costs incurred by
7 the collecting Party. The contesting Party is entitled to the benefit of any
8 refund or recovery resulting from the contest, provided that the contesting
9 Party is liable for and has paid the tax contested.

10 **F. Section 5.6 Insurance**

11 Qwest's SGAT Section 5.6 addresses insurance. AT&T suggests several
12 modifications to Qwest SGAT Section 5.6, which it states are intended mainly to clarify
13 rather than substantively change the required coverage. However, AT&T's suggested
14 modification of Section 5.6.1 is unclear. AT&T states that its language is intended to
15 make clear that a CLEC affiliate captive insurance company may be used to provide
16 coverage. However, AT&T's proposed modification does not state this, so it cannot be
17 accepted as written. Moreover, no general provision of the kind AT&T proposes will be
18 acceptable because not all CLECs offer the financial resources that this provision
19 presupposes.

20 In Section 5.6.1.3, AT&T suggests changing the word "Comprehensive" to
21 "Business." Qwest agrees with this proposal.

22 In Section 5.6.1.5, AT&T struck the sentence excluding liability for loss of profit or
23 business revenues for service interruption. Qwest concurs that this exclusion is
24 addressed elsewhere in the Agreement (in the Limitation of Liability section, not the

1 Indemnification section as AT&T states). Accordingly, Qwest proposes citing to the
2 Limitation of Liability provision so that the source of the limitation is clear.

3 AT&T also proposes modifications of Section 5.6.2 which it states "provide
4 further clarification." First, AT&T proposes a slight revision of the contract language
5 regarding the date for providing a certificate of insurance; this revision is acceptable to
6 Qwest. AT&T also suggests modification of the language naming Qwest as an
7 additional insured: rather than stating that Qwest is an additional insured "as respects
8 Qwest's interests," AT&T proposes that Qwest is an additional insured "as respects
9 liability arising from CLEC's operations for which CLEC has legally assumed
10 responsibility herein." This change is acceptable to Qwest.

11 Finally, AT&T suggests modification of Section 5.6.2, (3) and (4). These
12 suggestions cannot be accepted as presented by AT&T. Specifically, the obligations
13 regarding primary insurance and severability of interest/cross liability insurance should
14 not be limited to commercial general liability insurance, which is the only policy under
15 which Qwest is a named additional insured. Qwest therefore proposes revision of the
16 AT&T proposals with respect to Section 5.6.2, (3) and (4).

17 As revised, the insurance revisions would appear as follows:

18 5.6.1 CLEC shall at all times during the term of this Agreement, at its own
19 cost and expense, carry and maintain the insurance coverage listed below
20 with insurers having a "Best's" rating of B+XIII.

1 5.6.1.1 Workers' Compensation with statutory limits as
2 required in the state of operation and Employers' Liability insurance with
3 limits of not less than \$100,000 each accident.

4 5.6.1.2 Commercial General Liability insurance covering
5 claims for bodily injury, death, personal injury or property damage
6 occurring or arising out of the use or occupancy of the Premises, including
7 coverage for independent contractor's protection (required if any work will
8 be subcontracted), Premises-operations, products and/or completed
9 operations and contractual liability with respect to the liability assumed by
10 CLEC hereunder. The limits of insurance shall not be less than
11 \$1,000,000 each occurrence and \$2,000,000 general aggregate limit.

12 5.6.1.3 Comprehensive—Business automobile liability
13 insurance covering the ownership, operation and maintenance of all
14 owned, non-owned and hired motor vehicles with limits of not less than
15 \$1,000,000 per occurrence for bodily injury and property damage.

16 5.6.1.4 Umbrella/Excess Liability insurance in an amount of
17 \$10,000,000 excess of Commercial General Liability insurance specified
18 above. These limits may be obtained through any combination of primary
19 and excess or umbrella liability insurance so long as the total limit is
20 \$11,000,000.

21 5.6.1.5 "All Risk" Property coverage on a full replacement
22 cost basis insuring all of CLEC personal property situated on or within the
23 Premises. CLEC may elect to purchase business interruption and
24 contingent business interruption insurance. As provided in Section 5.8 of
25 this Agreement, Qwest has no liability for loss of profit or revenues should
26 an interruption of service occur.

27 5.6.2 CLEC shall provide certificate(s) of insurance evidencing coverage,
28 and ~~annually thereafter within ten (10) calendar days of prior to the~~
29 renewal of any coverage maintained pursuant to this Section. Such
30 certificates shall (1) name Qwest as an additional insured under
31 commercial general liability coverage as respects ~~Qwest's interests~~liability
32 arising from CLEC's operations for which CLEC has legally assumed
33 responsibility herein; (2) provide Qwest thirty (30) calendar days prior
34 written notice of cancellation of, material change or exclusions in the
35 policy(s) to which certificate(s) relate; (3) indicate that, with respect to this
36 Agreement, including those policies under which Qwest is an additional
37 insured, coverage is primary and not excess of, or contributory with, any
38 other valid and collectible insurance purchased by Qwest; and (4) provide
39 acknowledge severability of interest/cross liability coverage with respect to

1 this Agreement, including those policies under which Qwest is an
2 additional insured.

3 **G. Section 5.7 Force Majeure**

4 Both AT&T and WorldCom submitted comments on Section 5.7 of Qwest's
5 SGAT. Section 5.7 is the "Force Majeure" provision of the SGAT and addresses the
6 parties' respective liability for failure to perform because of a "Force Majeure Event," an
7 event that is beyond the control of a party. AT&T suggests removing the term
8 "equipment failure" from the list of events that make up a "Force Majeure Event."
9 Although Qwest believes that equipment failure is often included as a force majeure
10 event in commercial contracts, Qwest is willing to eliminate that term from Section 5.7
11 and revise the SGAT accordingly.

12 WorldCom suggests that the SGAT's Force Majeure provision should be
13 replaced entirely with language from WorldCom's "model interconnection agreement."
14 Consistent with many of WorldCom's other inserted language, WorldCom does not
15 explain why its language is preferable to the language already in the SGAT. Indeed,
16 WorldCom offers absolutely no comments on the SGAT language or WorldCom's
17 proposed language. Again, Qwest believes that, absent a specific, articulated reason,
18 there is no reason to change the SGAT language. As I stated earlier in my testimony, if
19 WorldCom desires language that differs from the SGAT, it is entitled to negotiate such
20 language with Qwest in an interconnection agreement. The Commission should not
21 replace the SGAT language simply because it differs from the language found in
22 WorldCom's "model interconnection agreement."

1 Nevertheless, I have reviewed WorldCom's proposed language and have
2 determined that it is insufficient. It is important to keep in mind that the Force Majeure
3 provision is reciprocal – it excuses either party from performance if certain events occur.
4 It is in both parties' best interests, therefore, for the provision to cover appropriate Force
5 Majeure events. Without explaining why, WorldCom removes many events from the list
6 of actions constituting Force Majeure Events, including, among other things, work
7 stoppage, inability to secure products or services of other persons or transportation
8 facilities, and acts or omissions of transportation carriers. I know from my experience,
9 that these events, or similar ones, are often included in force majeure provisions of
10 commercial contracts, and there is no reason to omit them from the SGAT. AT&T does
11 not think they should be removed from the SGAT.

12 Moreover, the SGAT requires "prompt notice" of any delay that is due to a Force
13 Majeure Event. WorldCom's proposal contains no such requirement. The SGAT,
14 therefore, provides more protection to the party whose performance is not affected by a
15 Force Majeure Event. Further, WorldCom's proposal states that the due date for a
16 party's performance will be extended if "there is an excused delay" in performance;
17 however, WorldCom's proposal does not define the term "excused delay." There is no
18 reason to replace the specific language of the SGAT with the vague and undefined
19 language of WorldCom's proposal. Finally, WorldCom proposes removing the SGAT's
20 language requiring the parties to provide service to each other at a level equivalent to
21 the level they provide themselves in the event of a labor dispute or strike and replacing
22 it with a requirement for the "delaying Party" to perform its obligations at a performance

1 level no less than that which it uses for its own operations. WorldCom has offered no
2 reasons to replace the specific SGAT language with its general language, and Qwest
3 sees no reason to adopt the proposed replacement language. Notably, AT&T does not
4 believe this part of the SGAT should be altered.

5 In sum, Qwest is willing to modify Section 5.7 of the SGAT as follows in
6 accordance with AT&T's comments:

7 5.7.1 Neither Party shall be liable for any delay or failure in performance
8 of any part of this Agreement from any cause beyond its control and
9 without its fault or negligence including, without limitation, acts of nature,
10 acts of civil or military authority, government regulations, embargoes,
11 epidemics, terrorist acts, riots, insurrections, fires, explosions,
12 earthquakes, nuclear accidents, floods, work stoppages, equipment
13 failure, power blackouts, volcanic action, other major environmental
14 disturbances, unusually severe weather conditions, inability to secure
15 products or services of other persons or transportation facilities or acts or
16 omissions of transportation carriers (collectively, a "Force Majeure Event").
17 The Party affected by a Force Majeure Event shall give prompt notice to
18 the other Party, shall be excused from performance of its obligations
19 hereunder on a day to day basis to the extent those obligations are
20 prevented by the Force Majeure Event, and shall use reasonable efforts to
21 remove or mitigate the Force Majeure Event. In the event of a labor
22 dispute or strike the Parties agree to provide service to each other at a
23 level equivalent to the level they provide themselves.

24 **H. Section 5.8 Limitation of Liability**

25 AT&T and WorldCom each propose several modifications to Qwest's SGAT
26 language for Section 5.8, "Limitation of Liability." These proposals are addressed
27 below.

1 First, AT&T proposes the deletion of Section 5.8.3 in its entirety, and it similarly
2 proposes the deletion of the first clause in Section 5.8.1, which references the limitation
3 addressed by 5.8.3. As discussed in the my earlier filed affidavit, the purpose of
4 Section 5.8.3 is to capture the traditional tariff limitation that limits liability to the cost of
5 services that were not rendered or were improperly rendered to the end user. AT&T
6 expresses a concern that this limitation could mean that recovery is disproportionate to
7 potential damages. However, AT&T's concern is misplaced. AT&T has the ability to
8 impose the same limits upon its own end users. Accordingly, it does not have any
9 legitimate concern about "disproportionality," or exposure to any liability beyond the cost
10 of the service provided. Moreover, to the extent that AT&T may be contractually
11 exposed to liability beyond the cost of providing service, AT&T (and not Qwest) is in the
12 best position to identify that potential liability and to take reasonable steps, through its
13 contract and tariff language, to protect against those risks. By contrast, if the changes
14 AT&T proposes were adopted, AT&T would not have appropriate incentives to protect
15 itself against potential liability to end users.

16 In order to clarify this limitation, Qwest has moved the basic limitation contained
17 in Section 5.8.3 to 5.8.1 and deleted the language relating to liability for direct damages
18 (which does not constitute a limitation of liability). For those losses not addressed by
19 the basic limitation contained in the revised Section 5.8.1, Qwest proposes further
20 clarification of the provision by means of an additional liability cap. All of the provisions
21 of Section 5.8.1 are reciprocal, thus benefiting Qwest and the CLECs alike.

1 AT&T expresses a concern that Section 5.8 of Qwest's SGAT might limit Qwest's
2 liability under a "backsliding" plan that requires Qwest to make payments for certain
3 "failures to perform." However, AT&T acknowledges that this issue "may need to be
4 revisited after the Commission adopts a backsliding plan." Unless and until such a plan
5 is adopted, the language proposed by AT&T is premature and renders the limitation of
6 liability provision unclear. Accordingly, AT&T's suggestion regarding the modification of
7 Section 5.8.2 should not be adopted.

8 AT&T next proposes certain revisions to Section 5.8.4, which in Qwest's SGAT
9 provides an exception to the limitation of liability for willful or intentional misconduct.
10 AT&T suggests that the exception be expanded to include gross negligence, not merely
11 willful and intentional misconduct, and that it also include "bodily injury, death or
12 damage to tangible real or tangible personal property caused by such Party's negligent
13 act or omission or that of their [sic] respective agents, subcontractors or employees."
14 AT&T's suggested modifications reflect a misunderstanding of the purpose of the
15 exception. "Willful and intentional misconduct" is addressed because that is the
16 standard exclusion contained in the Parties' tariffs. (However, as set forth below, Qwest
17 proposes that this language be revised to conform more closely to the tariff.) By
18 contrast, the exclusion of liability for gross negligence is inconsistent with most tariff
19 exclusions.

20 AT&T's second proposed modification of Section 5.8.4 has the potential effect of
21 altering State law. Section 5.8.2 excludes liability for consequential damages, an

1 exclusion with which AT&T agrees. Thus, AT&T's proposed inclusion of liability for
2 bodily injury or death or for damage to tangible property amounts to a contractual
3 provision stating that these types of losses constitute "direct damages" under the SGAT,
4 and that liability for these damages is not limited by Section 5.8.1. While it is possible
5 that they do constitute "direct damages," the question is a matter of existing state law
6 that should be addressed in accordance with law of the State when the loss occurs.
7 Moreover, AT&T has provided no basis for excluding such damages from the general
8 limitations of Section 5.8.1.

9 AT&T's argument that Qwest's liability under the SGAT "is directly tied to Qwest's
10 section 271 application because sufficiently high liability and accountability are the only
11 way to continue to insure that Qwest will perform its contractual (and statutory)
12 obligations once its Section 271 application is approved" is without merit. The real issue
13 is whether this provision of the SGAT should be used as a basis for shifting liability to
14 Qwest, regardless of standard industry practices. From a commercial standpoint, such
15 a change cannot be justified.

16 AT&T also proposes certain modifications to Section 5.8.6 that are intended to
17 make Qwest liable for fraud associated with service to CLEC's end users where "Qwest
18 is responsible" for the fraud. AT&T misunderstands this provision, which is intended to
19 specify Qwest's duty to investigate fraud without altering the general limitations of
20 liability set forth in Section 5.8.

1 WorldCom provides no comments regarding, or redline of, Qwest's SGAT 5.8,
2 but it nevertheless submits competing language titled "Section 12, Limitation of
3 Liability." WorldCom's proposal purports to exclude liability for consequential damages.
4 However, WorldCom also proposes that "[a] Party's lost revenue caused by the other
5 Party's breach of this Agreement will not be considered consequential damages." This
6 proposed language is inappropriate and unacceptable. First, lost revenues are plainly
7 not in the nature of direct damages, but are (at most) consequential or indirect
8 damages. WorldCom provides no rationale at all for treating lost revenues as direct
9 damages here. Moreover, Qwest obviously cannot act as an insurer against a CLEC's
10 lost revenues.

11 WorldCom's proposal also is inconsistent with standard industry practices. For
12 example, SBC's "SGAT" language in Texas and Oklahoma and Verizon's agreements in
13 New York and Massachusetts, exclude liability for lost revenues. As noted above,
14 AT&T concurs that neither party should be liable for the lost revenues of the other.

15 WorldCom also proposes that, notwithstanding the exclusion of consequential
16 damages, Qwest (but not the CLEC) should be liable for reasonably foreseeable
17 damages resulting from the failure to provide or delay in providing services under the
18 Agreement. Put another way, WorldCom proposes that liability for consequential
19 damages be a unilateral obligation belonging only to the ILEC and not to the CLEC.
20 Again, WorldCom provides no rationale for such a one-sided provision, which as noted
21 above is inconsistent with industry standards.

1 For these reasons, the proposed language presented by WorldCom cannot be
2 accepted.

3 Qwest proposes several clarifications of Section 5.8 of the SGAT. First, Qwest
4 proposes modification of Section 5.8.1, including the deletion of the first sentence of
5 Section 5.8.1 (which was not a limitation of liability in any case), the addition of the
6 substance of Section 5.8.3 into Section 5.8.1, and the addition of further clarifying
7 language limiting liability for both Parties. All of these provisions are reciprocal:

8 ~~5.8.1 Except for losses relating to or arising out of any act or omission in~~
9 ~~its performance of services or functions provided under this Agreement,~~
10 ~~each Party shall be liable to the other for direct damages for any loss,~~
11 ~~defect or equipment failure including without limitation any penalty,~~
12 ~~reparation or liquidated damages assessed by the Commission or under a~~
13 ~~Commission ordered agreement (including without limitation penalties or~~
14 ~~liquidated damages assessed as a result of cable cuts), resulting from the~~
15 ~~causing Party's conduct or the conduct of its agents or contractors. Each~~
16 ~~Party's liability to the other Party for any loss relating to or arising out of~~
17 ~~any act or omission in its performance under this Agreement, whether in~~
18 ~~contract, warranty, strict liability, or tort, including (without limitation)~~
19 ~~negligence of any kind, shall be limited to the total amount that is or would~~
20 ~~have been charged to the other Party by such breaching Party for the~~
21 ~~service(s) or function(s) not performed or improperly performed. Each~~
22 ~~Party's liability to the other Party for any other losses shall be limited to the~~
23 ~~total amounts charged to CLEC under this Agreement during the contract~~
24 ~~year in which the cause accrues or arises.~~

25 Qwest also proposes that Section 5.8.2, the standard exclusion for consequential
26 damages, remain unchanged:

27 5.8.2 Neither Party shall be liable to the other for indirect, incidental,
28 consequential, or special damages, including (without limitation) damages
29 for lost profits, lost revenues, lost savings suffered by the other Party
30 regardless of the form of action, whether in contract, warranty, strict

1 liability, tort, including (without limitation) negligence of any kind and
2 regardless of whether the Parties know the possibility that such damages
3 could result.

4
5 As noted above, the substance of Section 5.8.3 is moved to Section 5.8.1.
6 However, the last clause, governing liability for direct damage to collocated equipment,
7 is deleted for the sake of clarity and consistency.

8 Qwest proposes that Section 5.8.4 be slightly modified to conform to existing
9 tariff language:

10 5.8.4. Nothing contained in this Section 5.8 shall limit either Party's
11 liability to the other for willful or intentional misconduct.

12
13 Qwest proposes that Section 5.8.5 be modified to clarify that the limitation of
14 liability provisions are not intended to alter the Parties' obligations under the
15 Agreement's payment provisions:

16 5.8.5 Nothing contained in this Section 5.8 shall limit either Party's
17 obligations of indemnification as specified in the ~~Indemnity~~ Section 5.9 of
18 this Agreement, nor shall this Section 5.8 limit a Party's liability for failing
19 to make any payment due under this Agreement.

20 Finally, Qwest proposes two changes to Section 5.8.6 in order to render the
21 provision consistent with existing tariff provisions and to clarify the Parties' respective
22 responsibilities for costs incurred:

1 5.8.6 CLEC is liable for all fraud associated with service to its end-users
2 and accounts. Qwest takes no responsibility, will not investigate, and will
3 make no adjustments to CLEC's account in cases of fraud unless such
4 fraud is the result of any intentional act or gross negligence of Qwest. |
5 Notwithstanding the above, if Qwest becomes aware of potential fraud
6 with respect to CLEC's accounts, Qwest will promptly inform CLEC and, at
7 the direction and sole cost of CLEC, take reasonable action to mitigate the |
8 fraud where such action is possible.

9 **I. Section 5.9 Indemnification**

10 AT&T proposes substantial modification of Qwest's indemnification language,
11 SGAT Section 5.9. It proposes the revision of Section 5.9.1.1 and the deletion of
12 Sections 5.9.1.2, 5.9.1.3, and 5.9.1.4. It then proposes the modification of Section
13 5.9.2.

14 AT&T's fundamental contention appears to be that the indemnification section
15 should expose Qwest to more, rather than less, liability, because otherwise "there will
16 be little incentive left to insure Qwest's performance of interconnection agreements." Of
17 course, this is not an appropriate standard for evaluating SGAT indemnification
18 provisions; indemnification provisions are not intended to function as substitute
19 remedies for breach, as AT&T appears to believe. Instead, the indemnification
20 provision of the SGAT should be aimed at reflecting standard practices within the
21 telecommunications industry, consistent with the fair allocation of responsibility between
22 the parties.

23 First, AT&T proposes the striking of the first clause of 5.9.1.1 on the ground that
24 "there is no basis to exclude CLEC customer claims for which Qwest is responsible."

1 However, the language that AT&T has deleted does not exclude CLEC customer claims
2 for which Qwest is responsible. Nevertheless, Qwest can agree to this SGAT
3 modification; Section 5.9.1.2 specifically addresses end user claims. AT&T also adds
4 language stating, "Except as otherwise provided in Section 5.10" This addition is
5 unnecessary. SGAT Section 5.10 is the Intellectual Property section of the SGAT, and
6 as is discussed below, indemnification is not appropriate in that context. AT&T also
7 proposes modification of the provision relating to attorneys' fees; these modifications
8 are acceptable, with the exception of the unexplained and unnecessary reference to
9 "accounting fees."

10 AT&T also proposes inclusion of a phrase in Section 5.9.1.1, "or the
11 environment," which could potentially vastly expand the parties' environmental liability.
12 Environmental liability issues are addressed specifically in SGAT Section 5.20, and
13 should not be addressed in Section 5.9. On the other hand, AT&T's addition of the
14 words "for breach of" appears to clarify the SGAT, and so can be adopted.

15 The other significant change to 5.9.1.1 that AT&T proposes is a unilateral
16 provision indemnifying CLEC for infringement issues that arise out of the CLEC's or its
17 customer's use of services provided under the agreement. This provision would
18 dramatically alter, in a one-sided manner, the intellectual property rights and obligations
19 of the parties and cannot be accepted.

1 To further clarify Section 5.9.1.1, Qwest proposes additional language, consistent
2 with the limitations of liability contained in Section 5.8, regarding the limits of each
3 Parties' indemnification obligations under Section 5.9.1.1.

4 AT&T states that, based upon its understanding of Section 5.9.1.2, the Section
5 does not sufficiently hold Qwest "accountable." As a general matter, Qwest again notes
6 that it is inappropriate for AT&T to use general provisions (such as indemnification
7 language), which should reflect commercial practices, simply as a means of exposing
8 Qwest to greater potential liability. Section 5.9.1.2 is intended to require both parties to
9 indemnify each other for claims made by their end users, unless the claim is caused by
10 the other Party's willful misconduct. Qwest proposes a complete revision of Section
11 5.9.1.2 to clarify its intent.

12 AT&T also proposes the deletion of Section 5.9.1.3 (relating to claims based on
13 the content of a transmission). Assuming that Section 5.9.2 as revised is adopted,
14 Qwest can agree to the deletion of Section 5.9.1.3.

15 AT&T further proposes the deletion of Section 5.9.1.4, which is intended to clarify
16 how claims of this nature (relating to line sharing) should be addressed. Contrary to
17 AT&T's suggestion, the language does not "further define when Qwest will not have
18 liability for its failures that impact CLEC customers." However, the language could be
19 clarified, and Qwest proposes a complete revision of Section 5.9.1.4 for that purpose.

1 Finally, AT&T suggests modifications of Section 5.9.2, which it states are
2 intended "to clarify and address certain matters that may occur in the process of
3 handling an indemnified claim." Specifically, the AT&T language spells out how the
4 matter is to be addressed if the indemnifying party chooses not to defend the action.
5 This additional language in Section 5.9.2.2 is acceptable to Qwest. AT&T also adds
6 language regarding the circumstance in which the indemnified Party withholds consent
7 from a settlement. This additional language also appears reasonable and may be
8 accepted.

9 WorldCom contends that Qwest's indemnification language is "too generous for
10 Qwest, precluding indemnification unless the act or omission giving rise to the defective
11 or faulty services is shown to be intentional or malicious misconduct of the other Party."
12 This is incorrect. First, the indemnification language is reciprocal and benefits both
13 Parties. Moreover, the general indemnification language (Section 5.9.1.1) provides
14 indemnification where the cause of the claim is the indemnifying Party's failure to
15 perform under the Agreement. As noted above, Section 5.9.1.2 creates an exception to
16 5.9.1.1, specifically requiring the Parties to indemnify each other for claims made by
17 their end users -- regardless of fault -- unless the indemnifying Party's willful misconduct
18 is the cause. This is an exception to the general rule of 5.9.1.1.

19 Otherwise, WorldCom's suggested language regarding indemnification is
20 generally consistent with Qwest's SGAT language. Accordingly, no additional
21 modifications of Qwest's SGAT language regarding indemnification need be considered.

The following are the proposed changes to Qwest's SGAT 5.9.1 and 5.9.2 noted

above:

5.9.1 ~~With respect to third party claims, t~~The Parties agree that the following constitute the sole indemnification obligations between and among the Parties to indemnify each other as follows:

5.9.1.1 ~~Except for claims made by end users of one Party against the other Party, which claims are based on defective or faulty services provided by the other Party to the one Party, e~~Each of the Parties agrees to release, indemnify, defend and hold harmless the other Party and each of its officers, directors, employees and agents (each an "Indemnitee") from and against and in respect of any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement of any nature or kind, known or unknown, liquidated or unliquidated including, but not limited to, reasonable costs and expenses (including attorneys' fees), whether suffered, made, instituted, or asserted by any other party or person or entity, for invasion of privacy, personalbodily injury to or death of any person or persons, or for loss, damage to, or destruction of tangible property, whether or not owned by others, up to the total amount that is or would have been charged for services not performed or improperly performed, resulting from the i~~Indemnifying Party's performance, breach of applicable law, or status of its employees, agents and subcontractors; or for breach of or failure to perform under this Agreement, regardless of the form of action, whether in contract, warranty, strict liability, or tort including (without limitation) negligence of any kind.~~

5.9.1.2 ~~Where the third party claim is made by (or through) an end user of one Party against the other Party, which claim is based on defective or faulty services provided by the other Party to the one Party, then there shall be no obligation of indemnity unless the act or omission giving rise to the defective or faulty services is shown to be intentional and malicious misconduct of the other Party. In the case of a loss alleged or incurred by an end user of either Party, the Party whose end user alleged or incurred such loss (Indemnifying Party) shall defend and indemnify the other Party (Indemnified Party) against any and all such claims or loss by its end users regardless of whether the underlying service was provided or unbundled element was provisioned by the Indemnified Party, unless the loss was caused by the willful misconduct of the (Indemnified) Party.~~

5.9.1.3 ~~If the claim is made by (or through) an end user and where a claim is in the nature of a claim for invasion of privacy, libel, slander, or other claim based on the content of a transmission, and it is~~

1 made against a Party who is not the immediate provider of the
2 Telecommunications Service to the end user (the indemnified provider),
3 then in the absence of fault or neglect on the part of the indemnified
4 provider, the Party who is the immediate seller of such
5 Telecommunications Service shall indemnify, defend and hold harmless
6 the indemnified provider from such claim.

7 5.9.1.4 For purposes of this Section 5.9.1.2, where the
8 Parties have agreed to provision line sharing using a POTS splitter: "end
9 user" means the DSL provider's end user for claims relating to DSL and
10 the voice service provider's end user for claims relating to voice
11 service. "claims made by end users or customers of one Party against the
12 other Party" refers to claims relating to the provision of DSL services made
13 against the Party that provides voice services, or claims relating to the
14 provision of voice service made against the Party that provides DSL
15 services; and "immediate provider of the Telecommunications Service to
16 the end user or customer" refers to the Party that provides DSL service for
17 claims relating to DSL services, and to the Party that provides voice
18 service for claims relating to voice services. For purposes of this Section,
19 "customer" refers to the immediate purchaser of the telecommunications
20 service, whether or not that customer is the ultimate end user of that
21 service.

22 5.9.2 The indemnification provided herein shall be conditioned upon:

23 5.9.2.1 The indemnified Party shall promptly notify the
24 indemnifying Party of any action taken against the indemnified Party
25 relating to the indemnification. Failure to so notify the indemnifying Party
26 shall not relieve the indemnifying Party of any liability that the
27 indemnifying Party might have, except to the extent that such failure
28 prejudices the indemnifying Party's ability to defend such claim.

29 5.9.2.2 If the indemnifying Party wishes to defend against
30 such action, it shall give written notice to the indemnified Party of
31 acceptance of the defense of such action. In such event, the
32 indemnifying Party shall have sole authority to defend any such action,
33 including the selection of legal counsel, and the indemnified Party may
34 engage separate legal counsel only at its sole cost and expense. In the
35 event that the indemnifying Party does not accept the defense of the
36 action, the indemnified Party shall have the right to employ counsel for
37 such defense at the expense of the indemnifying Party. Each Party
38 agrees to cooperate with the other Party in the defense of any such action
39 and the relevant records of each Party shall be available to the other Party
40 with respect to any such defense.

1 5.9.2.3 In no event shall the indemnifying Party settle or
2 consent to any judgment pertaining to any such action without the prior
3 written consent of the indemnified Party. In the event the indemnified
4 Party withholds consent, the indemnified Party may, at its cost, take over
5 such defense, provided that, in such event, the indemnifying Party shall
6 not be responsible for, nor shall it be obligated to indemnify the relevant
7 indemnified Party against, any cost or liability in excess of such refused
8 compromise or settlement.

9 **J. Section 5.10 Intellectual Property**

10 Both WorldCom (with no justification) and AT&T address the Intellectual Property
11 provision contained In Section 5.10 of the SGAT.

12 First I will address AT&T's comments. AT&T has suggested that Qwest should
13 be required to indemnify CLECs for infringing upon third party intellectual property
14 rights. In commercial agreements, indemnification clauses are typically a negotiated
15 term and, contrary to the assertion of AT&T there is no "customary" provision. An
16 indemnification obligation is essentially an insurance policy, providing that if the
17 indemnified act occurs (the covered event to continue the analogy to an insurance
18 policy), the indemnifying party will pay the indemnified parties costs. To the extent such
19 costs are predictable and controllable by the supplying party, the supplying party may
20 be willing to provide indemnification. For example, the supplying party may be willing to
21 indemnify if it fails to supply goods which are manufactured in workmanlike manner
22 simply because it has control of its manufacturing processes and can, thus, control the
23 extent of liability. However, intellectual property issues are often totally out of the
24 control of the supplying party. For example, it is impossible to know what patent risks
25 may exist with respect to a particular services or goods being offered for sale because

1 patent applications are confidential (for at least 18 months from the filing date). Thus,
2 the supplying party would be insuring against an unknowable and uncontrollable risk if it
3 offered indemnification for all intellectual property claims. Such insurance may be
4 available from Lloyds of London at some (high) cost, but should not be imposed on
5 Qwest.

6 AT&T states that it has proposed certain changes to Section 5.10.3 to more fully
7 capture the FCC's decision on Intellectual Property rights. In its Order, the FCC made
8 certain determinations about facilities, equipment and services that an ILEC provides to
9 a CLEC.³ The *Intellectual Property Order* specifically calls for the "best efforts" standard
10 set forth in Section 5.10.3 of the SGAT and provides other guidance. It also states that
11 this obligation is an ILEC obligation, not a CLEC obligation, and therefore this provision
12 should not be reciprocal. It should apply to Qwest only. The FCC determined in its
13 decision that the ILEC's obligation is directly related to the ILEC's duties under Section
14 251(c)(3) of the Telecommunications Act of 1996.⁴ Qwest agrees with this latter point
15 and will change the section accordingly.

16 Qwest does not agree, however, with AT&T's position that the Intellectual
17 Property Order specifically requires Qwest to use best efforts to provide all features and
18 functionalities. My understanding is that it provides that Qwest use best efforts to obtain
19 Intellectual Property rights for CLECs where Qwest has obtained its own license.

³ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, Memorandum Opinion and Order, FCC 00-139 (rel. April 27, 2000) ("*Intellectual Property Order*").

1 AT&T's change in the second line seems to go to Qwest's efforts in providing the
2 services – not in obtaining Intellectual Property licenses. AT&T's insertion at the end of
3 the paragraph seems unnecessary. Qwest is obligated to use best efforts to obtain
4 licenses to the extent it has its own licenses and the licenses relate to the Agreement.
5 There is no reason to extend the obligation to services outside the scope of the
6 Agreement, as AT&T's addition appears to do.

7 AT&T states that the covenants and warranties called for in its proposed Section
8 5.10.3.1 are consistent with the FCC's decision on intellectual property and help to flesh
9 out the "best efforts" standard called for by the FCC. This language calls for
10 assurances from Qwest that it will not engage in behavior that interferes with the right of
11 a CLEC to use the intellectual property contained in facilities, equipment or services
12 provided by Qwest under this Agreement.

13 This clause is wholly unnecessary. The first two sentences state that Qwest will
14 not enter into an agreement that would, effectively, prevent it from performing under this
15 Agreement. Clearly, if Qwest took any action which prevented it from performing its
16 obligations under this Agreement, there would be a resultant breach of this Agreement.
17 It is unnecessary to specifically state all of the various ways in which a party may
18 breach an agreement and have that party specifically agree not to do those things. The
19 third sentence concerns third party indemnities. The agreement deals separately with
20 indemnities flowing from Qwest to the CLEC. While Qwest may choose to negotiate for

⁴ *Intellectual Property Order*, ¶ 9.

1 whatever indemnities it deems necessary or desirable in negotiations with its vendors,
2 there is no need to tie Qwest's hands in negotiations with its vendors by requiring Qwest
3 to obtain these "flow through" indemnities.

4 AT&T proposes an indemnity provision in its Section 5.10.3.2. Qwest's position
5 on indemnification for intellectual property issues is covered above with respect to
6 Paragraph 5.10.2.

7 AT&T has stricken the first and last parts of Section 5.10.7, stating that these
8 provisions are overly burdensome on the CLEC. In the balance of the provision, AT&T
9 makes the provision reciprocal.

10 The provisions objected to in this paragraph relate directly to rights granted by
11 Qwest to CLECs to use the "Authorized Phrase" in paragraph 5.10.6. If AT&T were
12 agreeable to removing the ability of the CLEC to use the Authorized Phrase, then its
13 changes would be acceptable. Otherwise, the provisions of this paragraph are
14 necessary and reasonable to protect Qwest's trademark rights especially in a situation,
15 such as this, where it has granted a right to use its name. Because the CLEC has not
16 granted reciprocal rights to use its trademarks, AT&T's proposal to make this language
17 reciprocal is misguided.

18 AT&T has proposed a new Section 5.10.8. This section calls for the disclosure of
19 certain information by Qwest to the ILEC regarding intellectual property. The FCC calls

1 for the disclosure of this information and states that failure by the ILEC to make this
2 disclosure could constitute a violation of Sections 251(c)(1) and 251(c)(3).⁵

3 As discussed above, it is impossible for Qwest to know about all third party
4 intellectual property associated with unbundled network elements. Thus, the first
5 sentence of the proposed language is overreaching in reciting "all intellectual property
6 owned, controlled or licensed by third parties," and should read "all intellectual property
7 licensed by third parties to Qwest". Further, disclosure of all intellectual property license
8 agreements related to an unbundled network element may be burdensome, and this
9 burden should only be imposed on Qwest when and where there is a demonstrated
10 need on the part of the CLEC to have access to the agreements. Further, the five
11 business day limitation suggested by AT&T is arbitrary. Qwest suggests that a
12 "reasonable period of time" standard be applied. Qwest is also adding language to
13 clarify that Qwest is not obligated to disclose the existence of agreements where the
14 terms of such agreements prohibit disclosure of their existence. This is consistent with
15 language proposed by AT&T recognizing that certain agreements may be subject to
16 such restrictions and requiring Qwest to use best efforts to negotiate with the other party
17 to the agreement to allow disclosure.

18 Now I will turn to WorldCom's proposed Intellectual Property provision. The first
19 sentence in Section 10.1 of the WorldCom proposal essentially states the common law
20 and is unnecessary. The second sentence is substantially the same in scope as

⁵ *Intellectual Property Order*, ¶ 17.

Paragraph 5.10.1 of the SGAT and WorldCom has not presented any argument as to why its proposal is better. The final portion of the paragraph is essentially dealing with the indemnification issue discussed above with respect to AT&T's proposal.

The issues in Section 10.1.2 were discussed in connection with AT&T's proposed changes to 5.10.7 above.

The issues in Section 10.2 were discussed above in connection with the indemnification issue discussed above with respect to AT&T's proposal.

The changes to Section 5.10 would read as follows:

5.10.3 To the extent required under applicable federal and state rules law, ~~the Party providing access~~ Qwest shall use its best efforts to obtain, from its vendors who have licensed intellectual property rights to ~~Qwest~~ such Party in connection with facilities and services provided hereunder, licenses under such intellectual property rights as necessary for the ~~CLEC~~ other Party to use such facilities and services as contemplated hereunder.

5.10.8 For all intellectual property licensed by third parties to Qwest associated with the unbundled network elements provided by Qwest under this Agreement, at any time during the term of the Agreement, Qwest shall promptly disclose to CLEC in writing upon the reasonable request of the CLEC accompanied by a demonstrated need on the part of CLEC to obtain such information (i) the name of the party owning, controlling or licensing such intellectual property, (ii) the facilities or equipment associated with such intellectual property, (iii) the nature of the intellectual property, and (iv) the relevant agreements or licenses governing Qwest's use of the intellectual property unless Qwest is prohibited by the terms of the agreement from disclosing the existence of the agreement. Within a reasonable period of time of a request by CLEC, Qwest shall provide copies of any relevant agreements or licenses governing Qwest's use of the intellectual property to CLEC. To the extent Qwest is prohibited by confidentiality or other provisions of an agreement or license from

disclosing to CLEC any relevant agreement or license, Qwest shall immediately (i) disclose so much of it as is not prohibited, and (ii) exercise best efforts to cause the vendor, licensor or other beneficiary of the confidentiality provisions to agree to disclosure of the remaining portions under terms and conditions equivalent to those governing access by and disclosure to Qwest.

K. Section 5.11 Warranties

Qwest's SGAT Section 5.11 disclaims express or implied warranties, consistent with Article 2 of the Uniform Commercial Code. AT&T suggests that, to the extent that the warranty language it proposes in Section 5.10.3.1 is adopted, then Section 5.11.1 would need to be modified. Qwest does not concur with AT&T's proposed language for 5.10.3.1. However, the change proposed by AT&T will ensure that, if the agreement contains -- or is later amended to contain -- any warranty provision whatsoever, Section 5.11.1 will be consistent with that warranty. Accordingly, Qwest accepts the change proposed by AT&T for Section 5.11.1.

WorldCom, on the other hand, tries to stand the warranty disclaimer on its head by adding detailed, unilateral warranty provisions to the SGAT. WorldCom offers virtually no support for its proposal, other than to state that Section 5.11 is "inadequate" and to contend that Qwest may not "disclaim" performance standards. Of course, Section 5.11 is not intended to, and does not, disclaim any performance standards.

WorldCom's proposed "warranty" language cannot be accepted, for several reasons. First, each of the issues addressed by WorldCom -- the standards applicable to interconnection, to UNEs, to ancillary services, and so forth -- is addressed

1 elsewhere in the SGAT (and in these proceedings). If WorldCom seeks to address the
2 applicable standards, it should do so in the context of the relevant portions of the SGAT.
3 Addressing the standards in the context of Section 5.11 of the SGAT is confusing, and
4 may result in internal inconsistencies.

5 To the extent that WorldCom seeks to do something other than describe the
6 applicable standards for UNEs and interconnection, then it becomes unclear what
7 WorldCom's intent actually is. For example, if WorldCom's intent is to create obligations
8 for Qwest -- or rights for the CLECs -- that are additional to the performance standards
9 stated elsewhere in the SGAT, then WorldCom misunderstands the warranty concept.
10 A warranty typically applies to goods, and the warranty itself is a statement of fact (or a
11 promise) regarding the quality or character of the goods sold. None of the proposals
12 that WorldCom has made has anything to do with warranties, properly understood.

13 Finally, as Qwest has discussed in the context of other provisions of the SGAT,
14 there is no basis in law for the "warranty" provisions WorldCom proposes. WorldCom
15 misconstrues the proper standards for UNEs, interconnection, and the other services
16 provided. However, Qwest will not address these issues again in the present context.
17 Rather, WorldCom's language should simply be rejected because it is at best
18 superfluous, and at worst inconsistent with the other provisions of the SGAT.

L. Section 5.12 Assignment

Both WorldCom and AT&T have addressed the Assignment provision. WorldCom in their proposed Section 5.2 would impose a prohibition upon Qwest's subcontracting the performance of any obligation without WorldCom's consent. This is a completely unreasonable restriction that would severely hamper Qwest's ability to perform under the Agreement. Rather as stated in the second sentence in that paragraph, when Qwest subcontracts work it remains fully responsible under the Agreement, and that is the point.

If Qwest were to assign the Agreement to an affiliate, AT&T seeks to have Qwest be the guarantor of the performance of the agreement by that affiliate. There are no grounds for the blanket imposition of a guarantor role absent any indication that a Qwest affiliate would be unable to perform. Given the magnitude of the obligations under the Agreement, it is highly unlikely that an affiliate would agree to the assignment if there were any significant risk that it could not perform.

AT&T protests Qwest's desire to have CLECs that are merged or otherwise consolidated come under the terms of one Interconnection Agreement on two bases: (1) AT&T believes it would abrogate the CLECs' Pick and Choose rights, and (2) AT&T contends that the decision as to what kind of Interconnection Agreements the consolidated companies have should be their decision. As to the first concern, Qwest would agree to add a provision that nothing in this section is intended to restrict the CLEC's rights to opt into Interconnection Agreements under § 252(i) of the Act. As to

1 the second concern, it is somewhat surprising given Qwest's and AT&T's experience
2 with AT&T's acquisition of TCG, TCI and Media One. Particularly with the acquisition of
3 TCG, the parties found that operating under two contracts was confusing and caused
4 operational problems for both companies. As a result, AT&T has agreed that the new
5 Interconnection Agreements among the parties will apply to all AT&T entities (whatever
6 they may be at that time).

7 AT&T then goes on to propose a lengthy additional section aimed at the sale of
8 Qwest's exchanges. Again, the experience of the parties with the latest sale of
9 exchanges (e.g., to citizens) calls into serious question why AT&T deems it necessary
10 to impose additional, uncalled for, contractual restrictions on Qwest's ability to
11 reasonably manage its business. Far from the contentious, inefficient process that
12 AT&T alleges occurred, things went so smoothly that AT&T intervened in very few of the
13 state commission approval proceedings and withdrew from those in which it did
14 intervene.

15 This limited AT&T role in the proceedings most likely occurred because Qwest is
16 aware of the CLECs' need for stability in their interconnection arrangements and took
17 this need into account in its sale of exchanges to Citizens. AT&T's Exhibit E was U S
18 WEST's (now Qwest's) notice to the CLECs of the sale of exchanges. As stated in that
19 notice, Citizens agreed to initiate negotiations for a new Interconnection Agreement
20 prior to close of the sale. If citizens was unable to reach a successful agreement with
21 the CLEC, it agreed to be bound by Qwest's Interconnection Agreement for the term of

1 that Agreement. Indeed, Citizens and AT&T were able to successfully negotiate a new
2 Agreement long before the close of the sales.

3 If and when this issue might arise in the future, Qwest will again address the
4 needs of the CLECs in a responsible manner, and thus there is no need for AT&T's
5 unreasonable intrusion in Qwest's business operations.

6 The revised Section 12 would read as follows:

7 5.12.1 Neither Party may assign or transfer (whether by operation
8 of law or otherwise) this Agreement (or any rights or obligations
9 hereunder) to a third party without the prior written consent of the other
10 Party. Notwithstanding the foregoing, either Party may assign or transfer
11 this Agreement to a corporate affiliate or an entity under its common
12 control; however, if CLEC's assignee or transferee has an Interconnection
13 agreement with Qwest, no assignment or transfer of this Agreement shall
14 be effective without the prior written consent of Qwest. Such consent shall
15 include appropriate resolutions of conflicts and discrepancies between the
16 assignee's or transferee's Interconnection agreement and this Agreement.
17 Any attempted assignment or transfer that is not permitted is void ab initio.
18 Without limiting the generality of the foregoing, this Agreement shall be
19 binding upon and shall inure to the benefit of the Parties' respective
20 successors and assigns.

21 5.12.2 Without limiting the generality of the foregoing subsection,
22 any merger, dissolution, consolidation or other reorganization of CLEC, or
23 any sale, transfer, pledge or other disposition by CLEC of securities
24 representing more than fifty percent (50%) of the securities entitled to vote
25 in an election of CLEC's board of directors or other similar governing
26 body, or any sale, transfer, pledge or other disposition by CLEC of
27 substantially all of its assets, shall be deemed a transfer of control. If any
28 entity, other than CLEC, involved in such merger, dissolution,
29 consolidation, reorganization, sale, transfer, pledge or other disposition of
30 CLEC has an Interconnection agreement with Qwest, the Parties agree
31 that only one agreement, either this Agreement or the Interconnection
32 agreement of the other entity, will remain valid. All other Interconnection
33 agreements will be terminated. The Parties agree to work together to
34 determine which Interconnection agreement should remain valid and

1 which should terminate. In the event the Parties cannot reach agreement
2 on this issue, the issue shall be resolved through the Dispute Resolution
3 process contained in this Agreement.

4 5.12.3 Nothing in this section is intended to restrict the CLEC's rights to
5 opt into Interconnection Agreements under § 252(i) of the Act.

6 **M. Section 5.13 Default**

7 Since neither WorldCom nor AT&T filed any testimony regarding this section, it
8 should be retained.

9 **N. Section 5.14 Disclaimer of Agency**

10 Since neither WorldCom nor AT&T filed any testimony regarding this section, it
11 should be retained.

12 **O. Section 5.15 Severability**

13 Like most of its other proposals, WorldCom proposes language to replace
14 Section 5.15 of the SGAT, the provision governing severability, without explaining why
15 the SGAT language should be replaced or even explaining how its proposal differs from
16 the SGAT language. Nevertheless, I have reviewed WorldCom's proposal and have
17 determined that the SGAT language is preferable to WorldCom's proposed language.
18 WorldCom's proposed language is as follows:

19 **Section 29. Severability**

20 29.1 Subject to Section [2] of this Part A, if any part of this Agreement is
21 held to be invalid for any reason, such invalidity will affect only the portion
22 of this Agreement which is invalid. In all other respects this Agreement

1 will stand as if the invalid provision had not been a part of it, and the
2 remainder of this Agreement will remain in full force and effect.

3 Qwest's SGAT language regarding severability states:

4
5 5.15.1 In the event that any one or more of the provisions contained
6 herein shall for any reason be held to be unenforceable or invalid in any
7 respect under law or regulation, the Parties will negotiate in good faith for
8 replacement language as set forth herein. If any part of this Agreement is
9 held to be invalid or unenforceable for any reason, such invalidity or
10 unenforceability will affect only the portion of this Agreement which is
11 invalid or unenforceable. In all other respects, this Agreement will stand as
12 if such invalid or unenforceable provision had not been a part hereof, and
13 the remainder of this Agreement shall remain in full force and effect.
14

15 The material difference between WorldCom's language and the SGAT is
16 WorldCom's omission of the requirement that the parties negotiate a replacement
17 provision for a provision that has been declared invalid or unenforceable. It makes
18 sense to include such a provision. If a significant portion of the SGAT, such as the
19 portion governing access to unbundled network elements, is declared invalid, it is in the
20 parties' mutual interest to negotiate in good faith a replacement provision. Although
21 WorldCom includes a renegotiation provision in its Section 2.2 titled "Regulatory
22 Approvals," that provision relates only to portions of the SGAT that are made unlawful
23 because of a change in the governing law. Qwest's SGAT language in Section 5.15.1 is
24 broader than that language and includes invalidation of a provision for any reason.
25 Because WorldCom's proposed language is unnecessarily narrow, it should be rejected.

P. Section 5.16 Nondisclosure

Both AT&T and WorldCom suggest changes to Section 5.16 of the SGAT, which governs nondisclosure of confidential and proprietary information. I will address AT&T's specific proposed changes first.

1. AT&T's Suggested Changes

Section 5.16.1. AT&T suggests including "business or marketing plans" as information that need not be marked confidential or proprietary in order to be subject to the protections from disclosure under Section 5.16. This suggestion is troublesome for several reasons. First, AT&T does not provide a definition of the term "business or marketing plan." Absent a title such as "business plan," it could be difficult to tell whether a document is, in fact, a business plan. The term may mean different things to different people and could cause more problems than it would resolve. Second, it makes more sense to leave it up to the supplying party to mark such plans as "confidential" or "proprietary." To the extent that it is even necessary to supply a "business or marketing plan" to perform under the agreement, it is highly unlikely that the supplying party would fail to mark the plan "confidential" or "proprietary." Indeed, it seems that a business or marketing plan is the *first* thing a CLEC or ILEC will recognize as proprietary before providing it to a competitor. If the supplying party inadvertently fails to mark the plan "confidential" or "proprietary," Section 5.16.1 states that a supplying party may designate information as "confidential" or "proprietary" within ten days after disclosure of that information.

1 This leads me to AT&T's second proposed change to Section 5.16.1. AT&T
2 would add a provision that would allow a party that inadvertently discloses proprietary
3 information to correct that unintentional disclosure within thirty days. AT&T proposes
4 this language "to address the potential situation where one Party fails to identify
5 information as Proprietary at the time of disclosure or within 10 days after an *oral*
6 disclosure." AT&T's Initial Comments on Forecasting, Bona Fide Request Process and
7 General Terms and Conditions, page 43-44 (emphasis added). AT&T's proposal is
8 apparently based on a misreading of Section 5.16.1. The ten-day grace period does not
9 apply only to oral disclosures. Rather, it applies to "[a]ll information . . . (iii)
10 communicated and declared to the receiving Party at the time of delivery, or by written
11 notice given to the receiving Party within ten (10) calendar days after delivery, to be
12 "Confidential" or "Proprietary"" The ten-day period is a reasonable amount of time
13 to allow for designation of information as "confidential" or "proprietary." The more time
14 that elapses between the disclosure and the designation as proprietary, the more
15 difficult and potentially expensive it is to implement the protections required by the
16 SGAT. Therefore, AT&T's concerns are already adequately addressed by the SGAT,
17 and there is no reason to adopt AT&T's proposed language.

18 **Section 5.16.3.** AT&T suggests adding language to this provision that states
19 that the protections afforded to proprietary information are "In addition to any
20 requirements imposed by Applicable Law, including, but not limited to, 47 U.S.C. § 222."
21 In addition, AT&T proposes changes that specifically list who may access proprietary
22 information and under what circumstances that access may occur. For example, AT&T

1 proposes that the party that wishes to disclose proprietary information to third party
2 agents or consultants must execute a mutual written agreement with the disclosing
3 party. AT&T does not explain why it believes that these changes are necessary.

4 There is no reason to adopt AT&T's proposed language. The SGAT already
5 limits the use and dissemination of proprietary information. The SGAT language is
6 modeled upon Section 222 of the Act, 47 U.S.C. § 222, which contains Congress'
7 express direction regarding protection of customer and carrier information. AT&T
8 provides no compelling reason, indeed no reason at all, to modify the SGAT. Therefore,
9 I see no need to change the SGAT, and I believe that AT&T's proposed changes should
10 not be adopted.

11 **Section 5.16.5.** The SGAT contains a provision that allows a party to disclose
12 factual information about its network and telecommunications services on or connected
13 to its network to regulatory agencies, as long as "any confidential obligation is
14 protected." AT&T would broaden this provision to allow a party to disclose information
15 about its own network, as well as the proprietary information of the other party, in
16 various administrative, judicial, and investigative forums. Qwest is willing to adopt
17 AT&T's proposed changes and revise Section 5.16.5 of the SGAT as follows:

18 5.16.5 Nothing herein is intended to prohibit a Party from supplying factual
19 information about its network and Telecommunications Services on or
20 connected to its network to regulatory agencies including the Federal
21 Communications Commission and the Commission so long as any
22 confidential obligation is protected. Except as otherwise provided in
23 Section 5.18.2, either Party shall have the right to disclose Proprietary
24 Information to any mediator, arbitrator, state or federal regulatory body,
25 the Department of Justice or any court in the conduct of any proceeding

1 arising under or relating in any way to this Agreement or the conduct of
2 either Party in connection with this Agreement, including without limitation
3 the approval of this Agreement, or in any proceedings concerning the
4 provision of interLATA services by Qwest that are or may be required by
5 the Act. The Parties agree to cooperate with each other in order to seek
6 appropriate protection or treatment of such Proprietary Information
7 pursuant to an appropriate protective order in any such proceeding.

8
9 **Proposed Section 5.16.7.** AT&T proposes adding a new section to Section 5.16
10 of the SGAT that is devoted to forecasts. The only rationale offered by AT&T is that
11 forecasts are "particularly sensitive" and that AT&T's proposed language addresses
12 "certain concerns" that CLECs have previously raised regarding forecasts. AT&T's
13 Initial Comments on Forecasting, Bona Fide Request Process and General Terms and
14 Conditions, page 45, lines 31-33. In fact, those concerns have been addressed.
15 Section 7.2.2.8.12 of the SGAT addresses confidentiality of forecasts in the
16 interconnection context. That Section was filed with the Commission on February 8,
17 2001 and discussed in a workshop in February 2001. Thomas R. Freeberg addressed
18 the confidentiality of interconnection forecasts in his supplemental affidavit filed in this
19 proceeding. Similarly, Section 8.4.1.4, Collocation, also addresses forecasting and has
20 been thoroughly discussed. Margaret Bumgarner testified about this issue in her
21 supplemental affidavit. This issue has been resolved to the satisfaction of the parties in
22 different workshops for different provisions of the SGAT. AT&T's concerns are also
23 addressed by § 222 of the Act. Therefore, it is inappropriate to consider this issue in
24 this workshop or in this part of the SGAT.

1 **Proposed Section 5.16.8.** AT&T suggests that the SGAT include a provision
2 expressly allowing a party to seek equitable relief to enforce the confidentiality
3 obligations. Qwest recognizes that these clauses are typical in commercial contracts
4 and is willing to adopt AT&T's suggested language with two exceptions. First, it is
5 inappropriate to agree prospectively that a party "*would* be irreparably injured by a
6 breach of this Agreement." Rather, Qwest would agree that a party "*could* be
7 irreparably injured by a breach of this Agreement." Qwest would want the opportunity to
8 address both (a) whether the information claimed to be "proprietary" really was and (b)
9 whether the party was in fact irreparably injured. Second, AT&T intended this clause to
10 protect the confidentiality obligations; therefore, it should be expressly limited to
11 equitable relief for breach of the confidentiality obligations of the SGAT. Accordingly,
12 Qwest agrees to revise the SGAT to include the following new provision, renumbered
13 Section 5.16.7:

14 5.16.7 Each Party agrees that the disclosing Party could be
15 irreparably injured by a breach of the confidentiality obligations of this
16 Agreement by the receiving Party or its representatives and that the
17 disclosing Party shall be entitled to seek equitable relief, including
18 injunctive relief and specific performance, in the event of any breach of the
19 confidentiality provisions of this Agreement. Such remedies shall not be
20 deemed to be the exclusive remedies for a breach of the confidentiality
21 provisions of this Agreement, but shall be in addition to all other remedies
22 available at law or in equity.

23 **2. WorldCom's Proposed Replacement Language**

24
25 In its testimony, WorldCom raises only a single issue with Section 5.16 of the
26 SGAT: WorldCom complains that the SGAT does not specifically identify who may
27 access confidential information. As usual, however, WorldCom does not limit its

1 proposed language to that issue. Rather, WorldCom offers a *complete* replacement of
2 Section 5.16 of the SGAT. WorldCom's "solution" of a discrete alleged problem by
3 throwing out the entire section that contains that purported problem is no solution at all.
4 As I stated earlier, WorldCom's tactic of wholesale replacement of SGAT provisions
5 without any support or apparent rationale other than the mere fact that such provisions
6 are contained in WorldCom's "model interconnection agreement" is contrary to the
7 purpose and spirit of these proceedings.

8 Notwithstanding, I have reviewed WorldCom's proposal and determined that only
9 WorldCom's proposed Section 21.3, which I discuss below, should be adopted in the
10 SGAT. Otherwise, there is no reason to replace Section 5.16, or any part of it, with any
11 of WorldCom's proposed language. I address certain portions of each of WorldCom's
12 proposed sections below but, in the interests of administrative efficiency, I do not
13 address every dispute that Qwest has with every portion of WorldCom's proposed
14 language. Rather, Qwest believes it is incumbent upon WorldCom to provide
15 compelling reasons to replace SGAT language, which WorldCom has not done.

16 **WorldCom Section 21.1.** WorldCom's definition of "confidential information" is
17 unacceptable for the following reasons:

- 18 • There is no requirement in WorldCom's proposed language that the disclosing
19 party even mark information "confidential" or "proprietary." Although Qwest is
20 adept at identifying proprietary information, it is not clairvoyant, and the
21 burden should not fall on the recipient to identify proprietary information in

1 every instance of disclosure. The disclosing party must bear some
2 responsibility for making information "confidential" or "proprietary." Indeed,
3 this obligation becomes even more important when considering some of the
4 other changes suggested by WorldCom. For example, WorldCom's proposed
5 language would purportedly protect confidential or proprietary information of a
6 third party as well as information disclosed or otherwise obtained "incidental
7 to the performance of this Agreement" MWS-1, p. 27 . Absent marking
8 of such information, this language would require the receiving party to assess
9 the confidentiality of information that is not the other party's information and of
10 all information disclosed, whether or not it is obviously in connection with the
11 performance of the Agreement. WorldCom's language would place
12 unwarranted responsibility on the receiving party.

- 13 • Similarly, WorldCom's language that information is confidential and the
14 recipient is liable for breach of the agreement if it discloses information that
15 "should reasonably have been understood by the Recipient because of
16 legends or other markings, the circumstances of disclosure or the nature of
17 the information itself, to be proprietary . . ." unreasonably places the burden
18 on the recipient instead of the disclosing party, where it belongs. MWS-1, p.
19 27.
- 20 • WorldCom's list of specific pieces of information constituting confidential
21 information is so broad as to be unworkable. As just one example, WorldCom
22 would add "information that reflects, describes, or otherwise quantifies the
23 volume of services purchased under this Agreement." MWS-1, p. 28. Again,
24 WorldCom has provided no reason why this broad language should replace
25 the specific, detailed definition of confidential information in the SGAT. The
26 remainder of proposed Section 21.1 is similarly overbroad.
27

1 **WorldCom Section 21.1.1.** This proposed section addresses the use and
2 disclosure of confidential information. Section 5.16.3 also addresses the use and
3 disclosure of confidential information, and WorldCom has provided no compelling
4 reason, or any reason, why its overly broad language should replace the SGAT
5 language.

6 **WorldCom Section 21.1.2.** WorldCom's proposed language would prohibit retail
7 employees, affiliates, or independent contractors from accessing confidential
8 information. As I stated above, this topic is the subject of Section 222 of the Act,
9 47 U.S.C. § 222. Federal law already outlines the protective measures that must be
10 taken to ensure that wholesale confidential information is not improperly used and
11 disclosed. WorldCom has provided no reason to deviate from federal law and the
12 SGAT, and there is none.

13 **WorldCom Section 21.1.3.** This proposed language would provide exemptions
14 from the restrictions on the use and disclosure of confidential information. Certain
15 exemptions are virtually identical to the exemptions contained in Section 5.16.4 of the
16 SGAT. Because WorldCom provides no reason why its language should replace
17 substantially similar SGAT language, and Qwest sees no reason why it should adopt
18 WorldCom's language, Qwest declines to revise its SGAT. Further, WorldCom omits
19 several important exemptions, such as: (1) independent development of proprietary
20 information by an agent or contractor of the recipient (SGAT Section 5.16.4(d)); (2)
21 disclosure to a third person by the disclosing party without similar restrictions on such

1 third person's rights (SGAT Section 5.16.4(e)); and (3) approval for release by written
2 authorization of the disclosing party (SGAT Section 5.16.4(f)). These are standard
3 exemptions and are important to protect the rights of both the recipient and the
4 disclosing party. AT&T does not object to these exemptions, so Qwest sees no reason
5 to adopt WorldCom's language.

6 **WorldCom Section 21.1.4.** This proposed provision outlines the procedures the
7 parties would follow if one of them is required to disclose confidential information. This
8 topic is covered by Section 5.16.5, which I discuss above. Therefore, there is no reason
9 to adopt WorldCom's proposal.

10 **WorldCom Section 21.1.5.** Qwest has no objection to including an equitable
11 relief provision to enforce the confidentiality obligations in the SGAT. However, the
12 language suggested by AT&T, which I describe above, is preferable to the language
13 proposed by WorldCom because it is more representative of typical equitable relief
14 provisions in commercial contracts. In contrast, WorldCom's language would
15 purportedly allow a party to seek equitable relief for threatened breaches. In my
16 experience, this is not a typical part of equitable relief provisions and may, in fact, be
17 unenforceable because no disclosure has taken place. Further, WorldCom's proposal
18 would allow a party to seek equitable relief "without the necessity of posting a bond."
19 MWS-1, p. 30. Bonds are integral parts of injunctive proceedings. In the event that a
20 party seeks and obtains an injunction that is later determined to be wrongful, a bond is
21 necessary to ensure that the party that has been wrongfully enjoined is adequately

1 compensated for the wrongful act. Therefore, the language proposed by AT&T is
2 preferable to WorldCom's proposal.

3 **WorldCom Section 21.2.** WorldCom's proposal would prohibit a receiving party
4 from using or disclosing for marketing purposes, "or any purpose other than performing
5 under this Agreement," information "which would constitute CPNI if in the possession of
6 the Disclosing Party." This prohibition would apply even if the receiving party has
7 authorization from a "third-party concerning CPNI that relates to the third party's
8 relationship with the Disclosing Party." Again, WorldCom seeks to deviate from and add
9 to the obligations and restrictions imposed by Section 222 of the Act without providing
10 any justification. WorldCom bears the burden of proving that the SGAT language is
11 insufficient, and it has not done so. There is simply no need to adopt WorldCom's
12 language.

13 **WorldCom Section 21.3.** This proposal states that, except as otherwise
14 provided, the nondisclosure section does not limit a party's rights with respect to its own
15 confidential information or its obligations under Section 222 of the Act. Qwest agrees
16 that nothing in the SGAT affects either party's rights or obligations regarding its own
17 proprietary information or under Section 222 of the Act. Indeed, the SGAT language is
18 consistent with Section 222. Because Section 222 guides the parties' conduct, there is
19 no need to include the phrase "except as otherwise provided." Therefore, Qwest is
20 willing to agree to revise the SGAT to include a new provision as follows: (*Where is .8?*)

5.16.9. Nothing herein should be construed as limiting either Party's rights with respect to its own Proprietary Information or its obligations with respect to the other Party's Proprietary Information under Section 222 of the Act.

WorldCom Section 21.4. This provision addresses the return or destruction of proprietary information. This topic is already covered in Section 5.16.1 and 5.16.2 of the SGAT, and WorldCom provides no rationale for adopting its language in place of the SGAT language. Notably, AT&T does not suggest any changes to the SGAT language on this issue, and there is no apparent reason to adopt WorldCom's language.

WorldCom Section 21.5. This proposal states that the confidential information provisions "shall survive any expiration or earlier termination of this Agreement." Section 5.17 of the SGAT governs survival of the obligations of a party regarding proprietary information. WorldCom has not borne the burden of explaining why the SGAT provision is insufficient and its language is preferable. In fact, there is no reason to adopt WorldCom's language. AT&T has not suggested any changes regarding the survivability of confidentiality obligations, and there is none.

Q. Section 5.17 Survival

Section 5.17 addresses "survival" of the SGAT. AT&T suggests that the language of Section 5.17 be clarified to account for the possibility that the SGAT expires (or terminates) either before or after the two year term of the Agreement. Qwest concurs with this proposal. WorldCom's proposal is substantively identical to Qwest's

SGAT Section 5.17, as revised. Accordingly, the current SGAT may be revised as follows:

5.17.1 Any liabilities or obligations of a Party for acts or omissions prior to the termination or expiration of this Agreement~~completion of the two-year term~~, and any obligation of a Party under the provisions regarding indemnification, Confidential or Proprietary Information, limitations of liability, and any other provisions of this Agreement which, by their terms, are contemplated to survive (or to be performed after) termination of this Agreement, shall survive cancellation or termination hereof.

R. Section 5.18 Dispute Resolution

Section 5.18 of the SGAT concerns dispute resolution. In order to "expedite" the dispute resolution process, AT&T proposes a 12-page, single space replacement for Section 5.18 of the SGAT.

AT&T does not identify the key respects in which its proposal differs from Qwest's. However, the principal differences between the process outlined by AT&T and Qwest's SGAT 5.18 are differences which make the AT&T process more, rather than less, cumbersome than the Qwest process. For example, although both processes incorporate a mechanism for informal dispute resolution prior to any more formal process, the AT&T process requires the institution of an "Inter-Company Review Board" for purposes of the "informal" process. The level of formality of the process outlined by AT&T is likely to lengthen rather than shorten the dispute resolution process. Similarly, both parties' proposals make provision for arbitration of the dispute if informal dispute resolution is unsuccessful. However, AT&T's process outlines detailed and

1 burdensome requirements for the arbitration process -- such as the provision that "[t]he
2 Parties may jointly interview, in person or by telephone, each of those [arbitrator]
3 candidates not stricken or challenged in accordance with the foregoing procedures."
4 This level of detailed process is not likely to lend itself to the inexpensive and
5 expeditious resolution of a dispute. Moreover, the detailed procedures outlined by
6 AT&T are unnecessary, because both AAA and J.A.M.S./Endispute provide detailed
7 procedural rules. The parties need not, in the context of an SGAT, develop detailed
8 procedures for selection of arbitrators, replacement of arbitrators, and the duties and
9 powers of arbitrators.

10 Other aspects of the process proposed by AT&T also make it more rather than
11 less cumbersome. For example, under the procedure AT&T proposes, the arbitrator's
12 decision is non-binding, and must be submitted to the Commission for review. This
13 initiates a new process of submission of statements regarding the arbitrator's decision
14 and determination by the Commission about whether to review the matter further. (In
15 addition to providing too much detail regarding the arbitration process, the AT&T
16 process also dictates the Commission's process while at the same time
17 underdetermining the flexibility of the dispute resolution process.)

18 The AT&T process also creates yet another process for "service-affecting"
19 disputes, using the J.A.M.S./Endispute "streamlined" arbitration rules rather than its
20 "comprehensive" arbitration rules. These "service affecting" disputes are disputes that
21 "directly affect the ability of a Party to provide uninterrupted, high quality service to its

1 Customers." Unfortunately, this alternative process is made necessary only because
2 AT&T's dispute resolution process is so cumbersome to begin with. Under the Qwest
3 SGAT 5.18 process, no additional alternative dispute resolution process is necessary.
4 Moreover, even under the streamlined process, the arbitrator's decision is submitted to
5 the Commission for further review.

6 In sum, AT&T's proposed dispute resolution provisions do not provide any
7 advantages over the process already outlined in Qwest's SGAT. To the contrary, the
8 process seems unduly cumbersome and time consuming. The fact that AT&T's
9 proposal must itself incorporate a separate "streamlined" version of the process strongly
10 suggests that AT&T's basic dispute resolution process is not very streamlined at all.

11 WorldCom likewise proposes replacement language for SGAT 5.18, commenting
12 only that "Qwest's dispute resolution language in Section 5.18 is inadequate and
13 incomplete. WorldCom's language is more complete and should be adopted."
14 However, WorldCom fails to state in what respect its language is "more complete" than
15 Qwest's. Indeed, WorldCom's proposed process is in many respects similar to that
16 contained in the Qwest SGAT, except that the WorldCom language would require the
17 Parties to seek resolution of disputes at the Commission level before recourse to
18 arbitration. This approach appears to be backwards, since it requires Commission
19 intervention in a dispute before the parties have fully utilized alternative dispute
20 resolution. Moreover, the process described by WorldCom does not always permit the
21 Commission to resolve the matters that are presented to it. It apparently permits the

1 parties to file certain claims for arbitration at any time after the claims have been
2 submitted to the Commission -- whether or not the Commission has resolved the claims.
3 WorldCom's process therefore appears to create incentives for the parties to waste the
4 Commission's resources.

5 In sum, WorldCom's proposed replacement language for SGAT 5.18 should not
6 be adopted, largely because it does not create the appropriate incentives for alternative
7 dispute resolution.

8 Both AT&T and WorldCom suggest the use of J.A.M.S./Endispute rather than the
9 AAA, which is the process employed by SGAT 5.18. Because there may be
10 circumstances in which the parties would wish to use J.A.M.S./Endispute rather than
11 AAA, Qwest proposes additional language stating that, by mutual agreement of the
12 parties, the arbitration may be conducted by J.A.M.S./Endispute rather than by AAA.

13 Finally, AT&T specifically objects to Qwest's SGAT language requiring that the
14 discussions and correspondence between the parties for purpose of negotiating the
15 resolution of the dispute be treated as confidential information that is not admissible in
16 subsequent proceedings. This provision, which is consistent with Fed. R. Evid. 408
17 ("Evidence of conduct or statements made in compromise negotiations is likewise not
18 admissible."), serves to facilitate negotiations. Contrary to AT&T's suggestion, the
19 confidentiality provision does not make negotiations "less productive," nor is there any
20 basis for asserting that the provision somehow violates "CLECs' rights." Accordingly,
21 the provision regarding the confidentiality of the parties' discussions should be retained.

1 With the modification suggested above, SGAT 5.18 is as follows:

2 If the vice-presidential level representatives have not reached a resolution of the
3 Dispute within thirty (30) calendar days after the matter is referred to them, then
4 either Party may demand that the Dispute be settled by arbitration. Such an
5 arbitration proceeding shall be conducted by a panel of three arbitrators,
6 knowledgeable about the telecommunications industry. The arbitration
7 proceedings shall be conducted under the then-current rules of the American
8 Arbitration Association ("AAA"). Alternatively, by agreement of the Parties the
9 arbitration may be conducted pursuant to J.A.M.A./Endispute procedural rules.
10 The Federal Arbitration Act, 9 U.S.C. Sections 1-16, not state law, shall govern
11 the arbitrability of the Dispute. The arbitrator shall not have authority to award
12 punitive damages. All expedited procedures prescribed by the AAA rules shall
13 apply. The arbitrator's award shall be final and binding and may be entered in
14 any court having jurisdiction thereof. Each Party shall bear its own costs and
15 attorneys' fees, and shall share equally in the fees and expenses of the
16 arbitrator. The arbitration proceedings shall occur in the Denver, Colorado
17 metropolitan area or in another mutually agreeable location. It is acknowledged
18 that the Parties, by mutual, written agreement, may change any of these
19 arbitration practices for a particular, some, or all Dispute(s).

20 **S. Section 5.19 Controlling Law**

21 In its comments, AT&T suggests that Section 5.19 of the SGAT, "Controlling
22 Law," be revised. AT&T would reference "applicable federal law" instead of "the terms
23 of the Act" as controlling law. This replacement, which would apply the entire body of
24 federal law, including the Act as well as FCC rules and decisions, is reasonable. Qwest
25 agrees to revise Section 5.19 as follows:

26 5.19.1 This Agreement is offered by Qwest and accepted by CLEC in
27 accordance with applicable federal law~~the terms of the Act and the State~~
28 ~~law of Arizona.~~ It shall be interpreted solely in accordance with applicable
29 federal law~~the terms of the Act and the State law of Arizona.~~

1 WorldCom also offers changes to Section 5.19. WorldCom offers, without
2 explanation or reason, the "governing law" provision of its "model interconnection
3 agreement." WorldCom would replace Section 5.19 with the following provision:

4 7.1 This Agreement will be governed by and construed in accordance with
5 the Act and the FCC's Rules and Regulations, except insofar as state law
6 may control any aspect of this Agreement, in which case the domestic laws
7 of the {State of _____}, without regard to its conflicts of laws principles, will
8 govern.
9

10 The language proposed by AT&T is preferable to WorldCom's proposed change.
11 WorldCom's proposed language could introduce unnecessary ambiguity and conflict in
12 determining when state law controls an aspect of the Agreement. Further, WorldCom's
13 suggested changes are simply unnecessary in light of the explicit reference to both
14 federal and state law in Section 5.19 as revised. There is no good reason to adopt
15 WorldCom's proposed language.

16 **T. Section 5.20 Responsibility for Environmental Contamination**

17 Qwest SGAT Section 5.20 governs issues relating to environmental liability.
18 WorldCom proposes replacement language for the provision. However, Sections 27.1
19 and 27.2 are substantively identical to SGAT 5.20. The SGAT language should be
20 retained because it is more streamlined. The only substantive difference between the
21 language proposed by WorldCom and the language of SGAT 5.20 is WorldCom's
22 Section 27.3. WorldCom proposes additional language requiring CLECs to comply with
23 applicable law in the presence of suspected asbestos, disclaiming CLEC liability in

1 connection with such asbestos, and requiring Qwest to advise CLECs of potential
2 issues relating to asbestos. The identical language appears in WorldCom's agreement
3 with Verizon in Massachusetts. WorldCom's proposed additional language regarding
4 asbestos is acceptable to Qwest. Accordingly, the following SGAT provision may be
5 added:

6 5.20.2 In the event any suspect materials within Qwest-owned,
7 operated or leased facilities are identified to be asbestos containing,
8 CLEC will ensure that to the extent any activities which it undertakes in the
9 facility disturb such suspect materials, such CLEC activities will be in
10 accordance with applicable local, state and federal environmental and
11 health and safety statutes and regulations. Except for abatement activities
12 undertaken by CLEC or equipment placement activities that result in the
13 generation of asbestos-containing material, CLEC does not have any
14 responsibility for managing, nor is it the owner of, nor does it have any
15 liability for, or in connection with, any asbestos-containing material. Qwest
16 agrees to immediately notify CLEC if Qwest undertakes any asbestos
17 control or asbestos abatement activities that potentially could affect CLEC
18 personnel, equipment or operations, including, but not limited to,
19 contamination of equipment.

20
21 **U. Section 5.21 Notices**

22 Both WorldCom and AT&T suggest changes to Section 5.21 of the SGAT, which
23 governs notices. AT&T's suggested changes, which are shown below, simply add two
24 optional methods of service of notices and require a change of address or contact
25 information to be given in accordance with Section 5.21. Qwest believes that AT&T's
26 changes are reasonable and is willing to revise the SGAT as suggested by AT&T.
27 WorldCom also suggests adding personal service as a valid method of giving notice
28 under the SGAT as long as the party giving notice by personal service obtains a receipt

that such service was made. WorldCom's suggested change also makes sense. Therefore, Qwest is willing to revise the SGAT in accordance with the changes suggested by AT&T and WorldCom as follows:

5.21.1 Any notices required by or concerning this Agreement shall be in writing and shall be sufficiently given if delivered personally, delivered by prepaid overnight express service, or sent by certified mail, return receipt requested, to Qwest and CLEC at the addresses shown below:

Qwest Corporation
Director Interconnection Compliance
1801 California, Room 2410
Denver, CO 80202

With copy to:
Qwest Attention:
Corporate Counsel, Interconnection
1801 California Street, 49th Floor
Denver, CO 80202

and to CLEC at the address shown below:

Name:

If personal delivery is selected to give notice, a receipt acknowledging such delivery must be obtained. Each Party shall inform the other of any change in the above contact person and/or address using the method of notice called for in this Section 5.212.

The only other difference with WorldCom's proposal is that it would require any communication made "under" the SGAT, in addition to "notices," to be made in writing

1 pursuant to Section 5.21. This provision is simply too broad. When an ILEC and a
2 CLEC enter into an interconnection agreement, they are required to communicate on a
3 frequent basis – sometimes as often as daily. It would unnecessary and
4 administratively burdensome to effectively require all communications to be made in
5 writing according to the strictures of Section 5.21. Accordingly, Qwest is not willing to
6 accept WorldCom's proposed language.

7 **V. Section 5.22 Responsibility of Each Party**

8 Neither AT&T nor WorldCom provides any comments regarding SGAT 5.22, and
9 Qwest's SGAT language should be retained.

10 **W. Section 5.23 No Third Party Beneficiaries**

11 Once again, WorldCom proposes language to replace the SGAT language
12 without explaining why WorldCom's language is preferable to the SGAT language. It
13 appears that WorldCom included the replacement language simply because its "model
14 interconnection agreement" contains such a provision, regardless of the fact that
15 WorldCom's language is actually very similar to the SGAT language. I would like to
16 reiterate my prior opinion that this indiscriminate replacement is contrary to the purpose
17 of these proceedings, which is to consider the language of Qwest's SGAT, not one
18 CLEC's model interconnection agreement. Nevertheless, because the two provisions
19 are substantially similar, Qwest agrees to revise its SGAT to accommodate WorldCom's
20 suggested change as follows:

1 5.23.1 The provisions of this Agreement are for the benefit of the
2 Parties and not for any other Person. Unless specifically set forth herein,
3 ~~†This Agreement does~~will not provide and shall not be construed to
4 ~~provide~~any Person not a Party to this Agreement third parties with any
5 remedy, claim, liability, reimbursement, cause~~claim~~of action, or other
6 privilege~~right in excess of those existing by reference in this Agreement.~~

7 **X. Section 5.24 Referenced Documents (Jay)**

8 WorldCom argues that Section 5.24 of the SGAT, titled "Referenced
9 Documents," "suffers from the same problems discussed in regard to Section 2, namely
10 Qwest's apparent unilateral ability to modify documents incorporated into the SGAT."
11 Direct Testimony of Michael Schneider, p. 9, lines 2-5. WorldCom suggests deleting
12 Section 5.24. WorldCom's concerns have been addressed by Qwest's development
13 and implementation of the CICMP, which I describe in Section 2 herein. Therefore, for
14 the same reasons stated in Section 2, there is no need to delete Section 5.24.

15 **Y. Section 5.25 Publicity**

16 Neither AT&T nor WorldCom provides any comments regarding SGAT 5.25, and
17 Qwest's SGAT language should be retained.

18 **Z. Section 5.26 Executed in Counterparts**

19 WorldCom proposes counter language on this section. Since Qwest can discern
20 no meaningful differences between WorldCom's proposal and the Qwest language,
21 Qwest is amenable to either.

AA. Section 5.27 Compliance

WorldCom proposes counter language for this section. Qwest does not object to its Sections 6.1 and 6.2 which deal with complying with the law and obtaining regulatory approvals. WorldCom's Section 6.3 is incorporated in Qwest's Section 2 and will be addressed there. Its Section 6.4 may be problematic if the intent is that Qwest has to obtain rights and privileges for WorldCom's placement of facilities related to such things as subloop unbundling. In the UNE Remand Order, the FCC made it very clear that it is WorldCom's obligations to obtain these rights. *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order, Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96-98, (rel. November 5, 1999) at ¶ 213. Also in the Competitive Networks Order, the FCC made it clear that "the access obligations of § 224 apply when, as a matter of state law, the utility owns or controls the right of way to the extent necessary to permit such access." *In the Matter of Promotion of Competitive Networks in Local Telecommunications Market*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 99-217 (rel. October 25, 2000) at ¶ 85.

BB. Section 5.28 Compliance with CALEA

Section 5.28 of the SGAT addresses the Communications Assistance for Law Enforcement Act ("CALEA"). Neither AT&T nor WorldCom comments on this language. However, WorldCom proposes language under the heading, "20.3, Law Enforcement Interface."

1 WorldCom's proposed language is out of place; issues relating to wiretaps are
2 addressed generally in Sections 11.35, 11.36, and 11.37 of the SGAT. The SGAT
3 specifically addresses "Law Enforcement Interface" in Section 11.35.

4 In any case, WorldCom's proposal to modify Section 11.35 is not acceptable
5 because it suggests that Qwest's obligations with respect to pen register, trap and trace,
6 wiretap or other lawful interception orders might extend to requests from the CLEC.
7 This is not the case. Qwest will respond to lawful orders to provide assistance to law
8 enforcement, but that assistance function does not extend to CLEC requests for
9 assistance, except as otherwise required by a lawful order.

10 **CC. Section 5.29 Cooperation**

11 Neither AT&T nor WorldCom provides any comments regarding SGAT 5.29, and
12 Qwest's SGAT language should be retained.

13 **DD. Section 5.30 Amendments**

14 Qwest agrees with WorldCom's position in its testimony that this provision should
15 be deleted because it is covered in Section 1.7. Qwest would not object to adding
16 AT&T's proposed language regarding going to dispute resolution after 60 days if the
17 parties are unable to reach agreement on a requested amendment as a new Section
18 1.7.2

1 Qwest is unwilling to adopt WorldCom's proposed language on Waivers because
2 it is too restrictive.

3 The new Section 17.2 would read as follows:

4 17.2 Either Party may request an amendment to this Agreement at any
5 time by providing to the other Party in writing information about the desired
6 amendment and proposed language changes. If the Parties have not
7 reached agreement on the requested amendment within sixty (60)
8 calendar days after receipt of the request either Party may pursue
9 resolution of the amendment through the Dispute Resolution provisions of
10 this Agreement.

11
12 **EE. Section 5.31 Entire Agreement**

13 As in many cases WorldCom's proposed language uses terms which are not
14 used in the SGAT. Qwest would be agreeable to adding language that would refer to
15 Exhibits being included rather than Parts and Attachment. Most of the rest of
16 WorldCom's proposal tracks closely with Qwest's.

17 The modified Section 5.31 would read as follows:

18 5.31.1 This Agreement, including all Exhibits and subordinate
19 documents attached to it or referenced within, all of which are hereby
20 incorporated herein, constitutes the entire agreement between Qwest and
21 CLEC and supersedes all prior oral or written agreements,
22 representations, statements, negotiations, understandings, proposals and
23 undertakings with respect to the subject matter hereof.

1 **FF. Section 5.32 Pick and Choose**

2 Qwest proposes to delete this section since it belongs in the Template
3 Negotiation Agreement. Pick and Choose is covered in Section 1.8 of the SGAT.

4 WorldCom's proposed language for this section regarding amendments is
5 addressed in Section 1.7, Amendments and those regarding change in law, at Section
6 2.2.5.32.1 ~~----- If this document is being used to negotiate an Interconnection~~
7 ~~Agreement, the Parties agree to comply with Section 252(i) of the Act, and rules~~
8 ~~promulgated thereunder.~~

9
10 **SECTION 11 -- NETWORK SECURITY**

11 I addressed Section 11 in the Introduction. It should be rejected because it is
12 obsolete.

13 **SECTION 12 -- ACCESS TO OPERATION SUPPORT SYSTEMS (OSS)**

14 AT&T's questions regarding Qwest's Co-Provider Industry Change Management
15 Process ("CICMP") were covered in detail in James H. Allen's Affidavit of May 11, 2001.
16 Mr. Allen also discussed and attached the most recent version of Section 12, Access to
17 Operational Support Systems (OSS), in his affidavit. Since then, however, Qwest has
18 made minor changes to Section 12, and so I am including a further revised Section 12
19 in Exhibit LBB 1.

SECTION 17 -- BONA FIDE REQUEST PROCESS

As a preliminary matter, the Bona Fide Request Process ("BFR") must be put in perspective when responding to comments about its alleged deficiencies. As stated in my direct testimony, the BFR process was developed to address those unique situations where the SGAT does not already offer an interconnection service, access to an unbundled network element, or an ancillary service. The Arizona SGAT addresses in detail multiple unbundled elements, numerous collocation possibilities, and various forms of interconnection, ancillary services, and resale issues. In Qwest's experience in Arizona, almost all of a CLEC's needs are met by the number and diversity of these offerings. Qwest is doing business with 114 CLECs in Arizona. Since 1999, Qwest has received from these CLECs only two BFR requests, neither of which were submitted by WorldCom or AT&T. Against this background, I will address the comments of both AT&T and WorldCom.

WorldCom sweepingly asserts that Qwest's BFR timelines are "fraught with unreasonable delays" but offers no substantive information as to why it believes that any of the designated timelines are inappropriate. Qwest's timelines are shorter than those of other RBOCs for performing similar tasks, as demonstrated by review of the Web sites for Bell Atlantic and Bell South, two companies whose 271 applications have been approved:

1 **BellAtlantic (11/15/00)**

2 Acknowledgement: 10 business days

3 Preliminary Feasibility: 30 calendar days from initial receipt

4 Quote: 90 calendar days from initial receipt

5 **BellSouth (10/19/00)**

6 Acknowledgement: NA

7 Preliminary Feasibility: 25 business days from initial receipt

8 Quote: 50 business days from initial receipt

9 **Qwest**

10 Acknowledgement: 15 days from receipt

11 Preliminary Feasibility: 21 calendar days from initial receipt

12 Quote: 45 calendar days from preliminary feasibility

13

14

15 In addition, Qwest has worked to shorten its timelines. The BFR process
16 approved in Qwest's interconnection agreements in Arizona contains a timeline of 30
17 days from receipt for the Preliminary Feasibility, with an additional 90 days for the
18 Quote. Qwest has reduced this timeline in its proposed language in the Arizona SGAT
19 to a Preliminary Feasibility response in 21 days and a Quote in an additional 45 days.

20 It is important to note that the preliminary feasibility analysis is a dual analysis.
21 Since the BFR process is invoked when a CLEC requests that Qwest do something it

1 has not done before, Qwest must respond with two determinations. First, Qwest must
2 determine whether the request falls under the obligations of the Act, such that Qwest is
3 required to provide the requested UNE or service. Second, Qwest must perform a
4 Network analysis to determine whether the request is technically feasible. Given the
5 requirement for this dual analysis and the reduction in the time Qwest has already made
6 for performance of its Preliminary Feasibility analysis, Qwest disagrees with
7 WorldCom's unsupported suggestion that this timeline be further reduced to 15 days.

8 On page 10 of its comments, WorldCom seeks a provision that Qwest
9 acknowledge receipt of a BFR request within 48 hours. The language in WorldCom's
10 proposed paragraph 24.3 states: "Qwest shall acknowledge in writing such (Inquiry)
11 BFR within 24 hours of receipt." Qwest is agreeable to acknowledging receipt of a BFR
12 request within two business days and will modify the SGAT language accordingly.
13 Qwest notes, however, that while Qwest is certainly willing to acknowledge receipt of
14 the application within two business days, Qwest may require additional information or
15 clarification during the course of evaluating the request. It may not always be clear
16 within the first two business days what technical information will be unclear or
17 incomplete to network or field personnel who determine feasibility. Until the people who
18 actually do the technical evaluation receive the BFR and begin their analysis, Qwest
19 doesn't always know if it needs additional information to perform the analysis properly.
20 In some cases personnel must go out into the field and physically evaluate the particular
21 cable or terminal box or facility and/or start an in-depth analysis of how they would
22 provide the UNE or switch feature.

1 In addition to a two business day acknowledgement of receipt of the BFR,
2 WorldCom seeks weekly updates on the status of the BFR. Qwest is agreeable to
3 providing such weekly status updates, if requested, and will modify the BFR section
4 accordingly.

5 In Sections 17.4, 17.5, and 17.6 of the SGAT, Qwest addresses the technical
6 analysis aspect of the BFR. WorldCom simply asserts without analysis or foundation
7 that "this activity should be completed within 15 calendar days, not 21." WorldCom also
8 simply asserts, without more, that a price quote should also be completed within these
9 15 days. 15 days is simply not sufficient time to conduct a detailed technical as well as
10 legal analysis. It is certainly unreasonable to provide a quote for new UNEs in that
11 timeframe. Not only must the group that is most directly involved in reviewing the
12 request perform its technical analysis, but the request must then be circulated to cross
13 functional groups, such as switching or records maintenance, to determine if it affects
14 other parts of the company and requires additional changes to be implemented in those
15 departments. Moreover, the current WorldCom contract in Arizona on which WorldCom
16 relies and quotes elsewhere in its testimony provides that Qwest has 30 calendar days
17 to perform a Preliminary Feasibility Analysis.

18 Qwest has already offered in its proposed language to reduce the timeframes
19 from the 30 days now used in Arizona to 21 days. WorldCom's unsupported statement
20 that that 21 days should summarily be reduced to 15 days simply ignores the realities of
21 the work necessary to perform the process. Also, it should be kept in mind that these

1 are maximum timeframes. Some BFRs are completed in less time and are provided to
2 the CLEC sooner. However, since each request is unique in its complexity and
3 originality, some require the full amount of the time allotted.

4 Section 17.7 of the SGAT provides for 45 days to prepare the price quote. This
5 timeline must remain for the reasons stated above. Qwest can, however, agree to
6 WorldCom's language with some necessary changes. The new Section 17.12 would
7 read as follows:

8 17.12 In the event a CLEC has submitted a Request for an
9 Interconnection, a Network Element or any combination thereof and
10 Qwest determines in accordance with the provisions of this Section 17 that
11 the request is technically feasible, subsequent requests or orders for the
12 identical type of interconnection, network element or combination by that
13 CLEC shall not be subject to the BFR ~~or the Special Request~~ Process. To
14 the extent Qwest has deployed an identical network element or
15 combination under a previous BFR, a subsequent BFR ~~or Special Request~~
16 Process shall be not required. Qwest may only require CLEC to complete
17 a CLEC questionnaire before ordering such network elements or
18 combinations thereof. ICB Pricing and intervals will still apply for requests
19 that are not yet standard offerings. For purposes of this Section 17.12, an
20 "identical" request shall be one that is materially identical to a previous
21 request with respect to the information provided pursuant to Subsections
22 (a) through (ef) of Section 17.2 above.

23 WorldCom also asks that the BFR process be modified to include requests for
24 access to databases and/or network information. Qwest does not object to the use of
25 the BFR process for requests for unique, non-standard access to the commercial
26 databases that are offered as UNEs by Qwest. Examples of such databases are the
27 LIDB database or 800 database. (Qwest does not own or manage the number
28 portability database.) However, the BFR process is not the appropriate process for

1 access to databases such as Qwest's OSS systems, such as a CRIS billing system
2 database or network databases for trunks. Access to such internal databases is
3 handled through the IMA/EDI Interfaces and the CICMP process discussed in Mr.
4 Allen's Supplemental Affidavit.

5 WorldCom opposes the requirements found in 17.2(g) and (h) that a CLEC
6 submit documentation to support its entitlement under the Act to a requested unbundled
7 network element. The documentation at issue, however, is grounded in the Act and the
8 UNE Remand Order, which prescribe specific tests for the unbundling of proprietary and
9 nonproprietary unbundled network elements. It is important for Qwest to obtain the
10 information necessary to apply these tests, because Qwest does not have to offer an
11 unbundled network element unless a CLEC meets these tests. While Qwest believes
12 that a CLEC should be willing to provide the documentation demonstrating that its
13 request for the UNE meets the tests specified under the Act, Qwest is willing to drop its
14 request for the documentation from the CLEC. In this case, however, Qwest may not
15 have all of the information that the CLEC believes supports the CLEC's entitlement to
16 the requested UNE. Further, without this documentation, Qwest necessarily must
17 decide without participation by the CLEC whether the CLEC is entitled to the requested
18 UNE.

19 WorldCom has attached proposed language to its testimony. This proposed
20 language raises issues that are not addressed in WorldCom's testimony. I address
21 these additional issues as follows:

1 In Section 24.2 of its testimony, WorldCom seems to be proposing two BFR
2 processes, an "Inquiry BFR" and a "Firm BFR." Only one BFR is needed and in fact
3 only one BFR is appropriate. WorldCom seems to imply, erroneously, that the
4 necessary steps to evaluate the technical feasibility, determine whether the request falls
5 within the obligations of the Act, and the other steps of the process somehow change if
6 the BFR is labeled "Inquiry BFR" instead of "BFR." This is simply not the case. There is
7 one process and all the elements of the process are necessary to respond to the
8 request. Thus, WorldCom's proposed "Inquiry BFR" language should be not be
9 adopted. As a further comment, WorldCom's proposed requirement in Section 24.3 that
10 the acknowledgement of receipt of the "Inquiry BFR" should be 24 hours rather than the
11 48 hours because of the "Inquiry" label, should also be disregarded. Finally,
12 WorldCom's proposed limitation of the charge for performing the BFR analysis to \$200
13 when it carries the "Inquiry" label but requires the same steps as a BFR, is
14 unreasonable and should be rejected along with the reference that would permit
15 WorldCom to avoid the costs of preparing the BFR.

16 WorldCom's Section 24.6 deals with a dual step process that appears to extend
17 the process, not shorten it. Again, dual steps are inappropriate since only one BFR
18 process is necessary.

19 WorldCom's proposed language in Section 24.9 is agreeable in principle to
20 Qwest, and is addressed in the Special Request Process language that CLECs have

1 requested. Section 24.9 is overly broad, however. Specific qualifying language is
2 necessary to define an "identical request."

3 In Section 24.11 and Section 24.12, WorldCom appears to be adding a dispute
4 resolution clause to the BFR process. Qwest is agreeable to a dispute resolution
5 process for disputes involving this SGAT but it is not necessary to add such language
6 after each product or service for disputes involving that product or service. However, if
7 WorldCom continues to request a dispute resolution provisions here, language could be
8 added to this section consistent with the SGAT's general Dispute Resolution provision.

9 AT&T's comments regarding BFR address what it considers general deficiencies,
10 specific deficiencies, and a particular Oregon BFR request. I will address AT&T's
11 comments in the order in which they are made.

12 Like WorldCom, AT&T makes broad, general statements that the process is
13 deficient and too lengthy without addressing the specific steps of the process that
14 Qwest must go through to complete a BFR. AT&T also seems to object that there may
15 be a dispute as to whether a request is for a service or product already provided in the
16 SGAT. It is true that a dispute over the interpretation of the Agreement could arise, but
17 AT&T offers no concession to the possibility of good faith disputes. The SGAT provides
18 for dispute resolution and the possibility that a dispute may arise in the BFR section or
19 any other is not a reason to do away with the section.

1 AT&T seeks accommodation for "minor" requests that do not require the BFR
2 process. Qwest has responded to this request by the CLECs in the workshops by
3 offering the Special Request Process ("SRP"), which I address separately.

4 AT&T also raises concern that Qwest makes no affirmative statement that having
5 provided the quote for the requested UNE or interconnection, Qwest will, in fact, provide
6 the requested UNE or interconnection element. This seems obvious on it's face, but
7 Qwest will agree to provide the element requested in the BFR if it qualifies. As to
8 specific timetables, implementation of a BFR begins upon acceptance by the CLEC.
9 AT&T attached as Exhibit G to it's direct testimony a BFR response from Qwest to
10 AT&T. This AT&T exhibit provides the response to AT&T's concern. The quote
11 provided to AT&T in Oregon states that orders can be processed upon acceptance of
12 terms and rates, along with an ASR order form and the designated telephone numbers
13 needed to technically implement the requested trunks. There is no requirement to
14 initiate an amendment process.

15 With respect to the timelines in Section 17, AT&T's concerns about earlier
16 acknowledgement that a request has been received were addressed in response to the
17 WorldCom comments. Qwest is agreeable to a 48 hour notification. As noted above,
18 Qwest's SGAT significantly reduces, from earlier versions of the Template Agreement,
19 the timeframes to determine BFR feasibility and provide a quote (21 days for feasibility
20 versus 30; 45 days for quote versus 90). Moreover, as explained previously, whether or
21 not additional information is needed often cannot be determined until the analysis of

1 possible implementation is undertaken. This is demonstrated by AT&T's Exhibit 1, which
2 is a request for additional information that Qwest sent to AT&T six days after receiving
3 the AT&T BFR. As stated earlier in my testimony, these timelines are outside limits and
4 Qwest makes every effort to move the process along as expeditiously as possible.
5 Each request, however, is unique. A particular request may be more complicated and
6 require a longer analysis to determine if additional information is needed. Qwest will
7 abide by the timelines in Section 17.

8 Finally, as to AT&T's general comment that once a previous BFR has been
9 approved no further BFRs need be submitted for similar requests, I have addressed this
10 in response to similar arguments by WorldCom. AT&T is well aware that not all
11 equipment configurations are the same in all locations and that not all switches have the
12 same interfaces or software loads or even the same manufacturer. The issue centers
13 around whether the request truly is identical to a previously approved BFR. If the
14 request is similar in many respects, the evaluation and costing process will go much
15 faster. And as Qwest has committed in Section 17.11, if Qwest is able to provide the
16 response sooner, it will.

17 In response to AT&T specific concerns, the form for requesting a BFR is on the
18 Qwest web site for CLECs at www.qwest.com/wholesale/preorder/bfrsrprocess.html.
19 I have attached a copy of the form to my testimony. The application form is designed to
20 obtain the information generally necessary to process any request. However the form

1 also encourages CLECs to provide diagrams, illustrations, technical contacts or any
2 additional information that might be helpful in describing the specific request.

3 AT&T voices considerable concern over Qwest's use of the term 'preliminary'
4 analysis in Section 17.4. Qwest is agreeable to striking the word 'preliminary' in 17.4.
5 As for the striking the escalation process in Section 5.18, Qwest believes that escalation
6 to senior officers in the respective companies often avoids or resolves problems quickly
7 between the companies. Moreover, the escalation can often be as simple as a phone
8 call thus not delaying the arbitration of a dispute. (I separately address AT&T's
9 arbitration process in the arbitration section of my testimony.)

10 The new Section 17.4 would read as follows:

11 17.4 Within twenty-one (21) calendar days of its receipt of the BFR and
12 all information necessary to process it, Qwest shall provide to CLEC an
13 preliminary analysis of the BFR. The preliminary analysis shall specify
14 Qwest's conclusions as to whether or not the requested Interconnection or
15 access to an unbundled network element complies with the unbundling
16 requirements of the Act.

17 AT&T's characterization of the Oregon BFR process as being too long simply
18 ignores AT&T's Exhibits and its Agreement. The facts and timelines are as follows:
19 Mark Miller of Qwest notified Christine Schwartz of AT&T via e-mail on December 6,
20 2000 how to obtain the BFR application form off the web. AT&T submitted the
21 completed form on December 12, 2000. Qwest notified AT&T within six days of receipt
22 that it needed additional information. This request for additional information did not
23 prevent Qwest from responding ahead of the deadlines in the AT&T Agreement. As

1 provided in the Agreement, the quote was due by May 10, 2001. Qwest provided the
2 quote on March 30, 2001. As of May 10, 2001, AT&T had not accepted or rejected the
3 quote.

4 AT&T's charges that Qwest has not yet implemented its BFR or provided a
5 delivery date are blatantly misleading. Qwest provided AT&T with a quote on March 30,
6 2001 that states orders can be processed upon acceptance of terms and rates in the
7 quote letter. AT&T has not yet accepted the quote to proceed with its order. Qwest is
8 willing to proceed with AT&T's request. AT&T has itself delayed the implementation.

9 SPECIAL REQUEST PROCESS

10 The explanation for the Special Request Process is contained in my Arizona
11 supplemental direct testimony filed May 11, 2001. The Wholesale Product
12 Development Guide has been updated to incorporate a description of when the Special
13 Request Process is used. This website also contains a link to the actual Special
14 Request Process Form which is attached to my testimony as Exhibit LLB 2. The
15 relevant pages of the Wholesale Product Development Guide are located at
16 www.qwest.com/wholesale/preorder/ under the BFR Special Request tab. As stated in
17 my supplemental direct testimony the Special Request Process was developed at the
18 request of the CLECs originally for features of a switch to be loaded and/or activated. It
19 was later expanded to include non standard combinations of unbundled network
20 elements that Qwest is not currently offering as standard products, and for unbundled
21 network elements that have been defined by the FCC or this Commission as a network

1 element to which Qwest must provide unbundled access but for which Qwest has not
2 created a standard product, such as UDIT and EEL between OC-3 and OC-192.
3 These later provisions were also added at the behest of the CLECs and the process has
4 not "mushroomed" as AT&T would suggest.

5 AT&T also requests that Qwest not be allowed to "bounce" a request submitted
6 by AT&T from the Special Request Process to the Bona Fide Request Process. Until a
7 request has been investigated, Qwest may not know if it qualifies as a Special Request
8 or if it must go through the more detailed feasibility analysis described in the BFR
9 process. An example would be if a requested switch feature is neither currently loaded
10 on the switch for Qwest to activate nor available from the switch manufacture to
11 purchase and load. In that case, a more thorough technical analysis may be needed to
12 determine if or how the capability could be made available. However if it is determined
13 that a request should have been submitted through the BFR process, Qwest will
14 consider the BFR clock to have started upon receipt of the original Special Request
15 application form, and will utilize any information uncovered during the initial review

16 **SECTION 18 -- AUDIT PROCESS**

17 As a general matter, AT&T questions why Qwest should have the right to audit
18 CLECs. The reason is clear. Both Qwest and the CLECs currently engage in reciprocal
19 exchange of traffic for local and access traffic, which generally is billed by the
20 terminating party. Qwest has the same interests and concerns about the CLECs' billing

1 accuracy and processes as the CLECs have concerning those of Qwest. Therefore, the
2 right to audit should be reciprocal.

3 AT&T then notes that Section 18.1 states that an audit means a review of data
4 relating to certain things like billing, provisioning and maintenance. In AT&T's view, this
5 scope is too narrow. It wants the right to audit other aspects of Qwest's performance,
6 such as Qwest's handling of forecasts and local service requests ("LSRs").

7 Qwest believes that the scope of the audit provision is appropriate. The Dispute
8 Resolution Process can be utilized for other questions regarding performance under the
9 Agreement as well as the PIDs. AT&T's concerns about the treatment of forecasting
10 information has been addressed in the discussion above concerning the Nondisclosure
11 section of the SGAT (Section 5.16) as well as in other workshops. AT&T's concern
12 about confidential handling of LSRs also is addressed by the Nondisclosure provisions
13 of the SGAT.

14 Next AT&T notes that Section 18.2.4 provides that no more than two audits may
15 be requested in any 12-month period. It requests that a calendar year be used rather
16 than a 12-month period and expresses concern that two audits per year may be
17 insufficient if an error is found that needs to be monitored to ensure that Qwest has
18 corrected it.

19 Audits generally require substantial investments of time and personnel to review,
20 gather and analyze data. AT&T's proposal for a "calendar year" basis would deny a

1 potential second audit if a problem was found near the end of a calendar year, but is not
2 particularly objectionable to Qwest. Qwest does not object to more frequent audits
3 under the circumstances to which AT&T refers, but any audit language must be
4 reciprocal to give both parties equal audit rights. When both parties have equal and
5 reciprocal audit rights, the tendency of one party to request an unreasonable number of
6 audits is self-policing.

7 AT&T notes that Section 18.2.7 limits the audit to transactions that occurred in
8 the last 24 months and submits that this time period is insufficient. Instead it suggests
9 that the appropriate period of time is the statute of limitations for contractual disputes,
10 which is three years in Arizona.

11 Two years is the time period that Qwest uses for determining how far back it can
12 bill to collect payment of interstate charges. The FCC and the industry have accepted
13 this period. Two years is a reasonable time to discover a problem and request an audit.

14 AT&T requests that Section 18.2.8 be amended to add language to reflect that
15 Qwest should reimburse a CLEC for its expenses in the event that an audit finds that an
16 adjustment should be made to the charges.

17 The costs of the audit should be borne by the requesting party since it is initiating
18 the action. Also, AT&T's proposed language does not make clear whether the
19 "aggregate" AT&T wants to use to determine whether expenses should be reimbursed

1 applies to each category listed or to the sum of the categories listed. Its proposal
2 should be rejected.

3 In Section 18.2.9, AT&T questions why Qwest should have the right to agree to
4 the independent auditor if the cost is to be paid by the CLEC. Because both parties will
5 be impacted by the ultimate findings of the audit, and an audit imposes significant costs
6 in terms of time and resources on both parties, even without the addition of AT&T's
7 cost-shifting provision, both should agree upon the independent auditor.

8 AT&T requests that Section 18.2.11 be amended so that the parties' disputes
9 regarding audit results will be handled under the dispute resolution section of the SGAT.
10 Qwest agrees to this change.

11 I will turn now to WorldCom's proposed provisions. First as stated above, audit
12 rights must be reciprocal.

13 In its Section 22.1, WorldCom requests four audits per year. With the exception
14 of the circumstances addressed by AT&T, the number of audits should remain at two
15 per twelve-month period due to the resources required to conduct a full audit. Qwest is
16 willing to use WorldCom's definition for Examinations in this section and WorldCom's
17 frequency for "Examinations," as these conform to general practice.

18 In its Section 22.2, WorldCom wants to expand the scope of audits to include
19 performance standards. The PIDs process will adequately address this area. Qwest

1 agrees to the last sentence of this section regarding providing appropriate support for
2 the audit and examinations so long as the obligation is reciprocal.

3 Qwest agrees with the first three sentences in WorldCom's proposed Section
4 22.3 regarding which party bears certain costs. However, Qwest cannot agree with the
5 last sentence, which would require Qwest to bear the costs where the adjustment on an
6 annualized bases is greater than one percent of the aggregate charges for all services.
7 One mistake on Qwest's part could result in a large percentage adjustment, particularly
8 for a small CLEC, and Qwest should not be penalized by having to pay the cost of the
9 audit under these circumstances.

10 Qwest does not believe that the language contained in WorldCom's proposed
11 Section 22.4 regarding how adjustments are handled is appropriate. Rather, the
12 Dispute Resolution provisions should control how adjustments should be handled, as
13 suggested by AT&T.

14 Qwest can accept the language contained in WorldCom's proposed Section 22.5
15 regarding restrictive statements on checks or otherwise.

16 Qwest agrees with the language in WorldCom's proposed Section 22 regarding
17 the section surviving for two years after the termination of the Agreement, despite the
18 existence of general survivability provisions because of the unique nature of the audit
19 provisions.

The new Section 18 would read as follows:

Section 18.0 - AUDIT PROCESS

18.1 "Audit" shall mean the comprehensive review of:

18.1.1 Data used in the billing process for services performed, including reciprocal compensation, and facilities provided under this Agreement; and

18.1.2 Data relevant to provisioning and maintenance for services performed or facilities provided by either of the Parties for itself or others that are similar to the services performed or facilities provided under this Agreement for Interconnection or access to unbundled loops, ancillary and finished services.

18.1.3 "Examination" shall mean an inquiry into a specific element of or process related to the above. Commencing on the Effective Date of this Agreement, CLEC may perform Examinations as CLEC deems necessary.

18.2 The data referred to above shall be relevant to any performance indicators that are adopted in connection with this Agreement, through negotiation, arbitration or otherwise. This Audit shall take place under the following conditions:

18.2.1 Either Party may request to perform an Audit.

18.2.2 The Audit shall occur upon thirty (30) business days written notice by the requesting Party to the non-requesting Party.

18.2.3 The Audit shall occur during normal business hours.

18.2.4 There shall be no more than two Audits requested by each Party under this Agreement in any 12-month period. Either Party may audit the other Party's books, records and documents more frequently than twice in any 12-month period (but no more than once in each quarter) if the immediately preceding audit found previously uncorrected net variances, inaccuracies or errors in invoices in the audited Party's favor with an aggregate value of at least two percent (2%) of the amounts payable for the affected services during the period covered by the Audit.

18.2.5 The requesting Party may review the non-requesting Party's records, books and documents, as may reasonably contain

1 information relevant to the operation of this Agreement.

2 18.2.6 The location of the Audit shall be the location where
3 the requested records, books and documents are retained in the
4 normal course of business.

5 18.2.7 All transactions under this Agreement which are over
6 twenty-four (24) months old will be considered accepted and no
7 longer subject to Audit. The Parties agree to retain records of all
8 transactions under this Agreement for at least 24 months.

9 18.2.8 Each Party shall bear its own expenses in connection
10 with conduct of the Audit or Examination. The requesting Party will
11 pay for the reasonable cost of special data extractions required by
12 the Party to conduct the Audit or Examination. For purposes of this
13 section, a "Special Data Extraction" means the creation of an
14 output record or informational report (from existing data files) that is
15 not created in the normal course of business. If any program is
16 developed to the requesting Party's specification and at that Party's
17 expense, the requesting Party will specify at the time of request
18 whether the program is to be retained by the other Party for reuse
19 for any subsequent Audit or Examination. ~~occasioned by the Audit,~~
20 ~~provided that the expense of any special data collection shall be~~
21 ~~born by the requesting Party.~~

22 18.2.9 The Party requesting the Audit may request that an
23 Audit be conducted by a mutually agreed-to independent auditor.
24 Under this circumstance, the costs of the independent auditor shall
25 be paid for by the Party requesting the Audit.

26 18.2.10 In the event that the non-requesting Party requests
27 that the Audit be performed by an independent auditor, the Parties
28 shall mutually agree to the selection of the independent auditor.
29 Under this circumstance, the costs of the independent auditor shall
30 be shared equally by the Parties.

31 18.2.11 The Parties agree that if an Audit discloses error(s),
32 the Party responsible for the error(s) shall, in a timely manner,
33 undertake corrective action for such error(s). All errors not
34 corrected within thirty (30) business days shall be escalated to the
35 ~~Vice-President level~~ resolved pursuant to the Dispute Resolution
36 Process..

37 18.2.12 Neither the right to examine and audit nor the right to
38 receive an adjustment will be affected by any statement to the
39 contrary appearing on checks or otherwise, unless the statement

1 expressly waiving the right appears in writing, is signed by the
2 authorized representative of the Party having that right, and is
3 delivered to the other Party in a manner sanctioned by this
4 Agreement.

5 18.2.13 This Section will survive expiration or termination of
6 this Agreement for a period of two years after expiration of
7 termination of the Agreement.

8 18.3 All information received or reviewed by the requesting Party or the
9 independent auditor in connection with the Audit is to be considered
10 Proprietary Information as defined by this Agreement. The non-requesting
11 Party reserves the right to require any non-employee who is involved
12 directly or indirectly in any Audit or the resolution of its findings as
13 described above to execute a nondisclosure agreement satisfactory to the
14 non-requesting Party. To the extent an Audit involves access to
15 information of other competitors, CLEC and Qwest will aggregate such
16 competitors' data before release to the other Party, to insure the protection
17 of the proprietary nature of information of other competitors. To the extent
18 a competitor is an affiliate of the Party being audited (including itself and
19 its subsidiaries), the Parties shall be allowed to examine such affiliates'
20 disaggregated data, as required by reasonable needs of the Audit.

21 **SECTION 19 -- CONSTRUCTION CHARGES**

22 Neither AT&T nor WorldCom provides any comments regarding SGAT 5.22, and
23 so Qwest's SGAT language should be retained.

24 **SECTION 20 -- SERVICE PERFORMANCE**

25 WorldCom has proposed the addition of language that states that Qwest will
26 become bound by the newly developed performance measures on the date of the
27 Commission order implementing the same. Qwest is agreeable to this change. Section
28 20 would read as follows"

29 20. Qwest is currently developing performance measure in a Qwest
30 workshop profess being conducted by the Commission. Qwest will become
31 bound by the newly developed performance measure on the date of the

1 Commission order implementing the same and amend this Agreement when the
2 Commission's Performance Measures Effort is complete, to incorporate all
3 aspects of the Commission's final decision.

4 **MISCELLANEOUS ISSUES RAISED BY AT&T AND WORLDCOM**

5 **A. WorldCom Section 2—Regulatory Approvals**

6 Sections 2.1 and 2.2 of WorldCom's proposal are covered in substantially the
7 same manner in Section 2 of the SGAT. WorldCom's proposed Section 2.3 would
8 require that Qwest consult with and obtain WorldCom's consent to form and substance
9 prior to filing any tariff and that such filings be consistent with the SGAT. Qwest has no
10 legal obligation to obtain WorldCom's consent to conduct its business, and it is to
11 nobody's advantage that the terms of the SGAT should, in effect, freeze Qwest's service
12 offerings. WorldCom's Section 2.4 would appear to conflict with its absolute insistence
13 that the SGAT always control. However, WorldCom can always request an amendment
14 if it prefers terms contained in Commission orders or tariffs, and Section 2.2 of the
15 SGAT proposes a process for doing just that.

16 **B. WorldCom Section 16 — Waivers**

17 The concepts contained in WorldCom's proposed Sections 16.1 through 16.3 are
18 covered by Section 5.13 (Default), and those contained in its Section 16.4 are covered
19 by Section 2.2 of the SGAT. Qwest basically agrees with these concepts.

1 **C. WorldCom Section 19 — Discrimination**

2 Standards for complying with the Act's nondiscrimination standards are
3 addressed in the individual sections for the various services. WorldCom's proposal
4 does not comply with the FCC's current nondiscriminatory standards. These provide
5 that: (1) where there is a retail analog, the service shall be provided in substantially the
6 same time and manner as Qwest provides the service to itself; and (2) where there is no
7 retail analog, the service shall be provided in a manner that will allow an efficient
8 competitor a meaningful opportunity to compete. See, e.g., *Verizon Massachusetts*
9 *Order* at ¶ 11.

10 **D. WorldCom Section 20.2 — Revenue Protection**

11 Section 11.34 of the SGAT already addresses revenue protection. WorldCom's
12 proposal imposes additional unacceptable burdens on Qwest, many of which are
13 beyond Qwest's control. For example, as its Section 20.2.4 would require, Qwest
14 cannot patrol all of its outside plant to prohibit clip-on fraud in its loops. Nonetheless,
15 Qwest has negotiated an additional revenue protection provision with Sprint and would
16 propose it in lieu of WorldCom's proposal. That provision reads as follows:

17 (G)1.2 Revenue Protection - Qwest shall make available to Sprint all
18 present and future fraud prevention or revenue protection features. These
19 features include, but are not limited to, screening codes and call blocking.
20 Qwest shall additionally provide partitioned access to fraud prevention,
21 detection and control functionality within pertinent Operations Support
22 Systems and signaling which include but are not limited to LIDB Fraud
23 monitoring systems.

24 (G)1.2.1 Uncollectable or unbillable revenues resulting from,

1 but not confined to, provisioning, maintenance, or signal network
2 routing errors shall be the responsibility of the party causing such
3 error or malicious acts, if such malicious acts could have
4 reasonably been avoided.

5 (G)1.2.2 Uncollectible or unbillable revenues resulting from the
6 accidental or malicious alteration of software underlying Network
7 Elements or their subtending operational support systems by
8 unauthorized third parties that could have reasonably been avoided
9 shall be the responsibility of the party having administrative control
10 of access to said Network Element or operational support system
11 software.

12 (G)1.2.3 Qwest shall be responsible for any direct uncollectible
13 or unbillable revenues resulting from the unauthorized physical
14 attachment to loop facilities from the Main Distribution Frame up to
15 and including the Network Interface Device, including clip-on fraud,
16 if Qwest could have reasonably prevented such fraud.

17 (G)1.2.4 To the extent that incremental costs are directly
18 attributable to a Sprint requested revenue protection capability,
19 those costs will be borne by Sprint.

20 (G)1.2.5 To the extent that either Party is liable to any toll
21 provider for fraud and to the extent that either Party could have
22 reasonably prevented such fraud, the causing Party must indemnify
23 the other for any fraud due to compromise of its network (e.g., clip-
24 on, missing information digits, missing toll restriction, etc.).

25 **E. WorldCom Section 25 — Branding**

26 The only branding required by the Act or the FCC rules is covered in Section
27 10.5.1.1.1 dealing with branding Directory Assistance and Section 10.7.2.10 dealing
28 with branding of Operator Services. WorldCom's proposal goes far beyond anything
29 required by the Act and includes such items as requiring technicians to identify
30 themselves as representing WorldCom when working at the end user premise (Section
31 25.2), unbranding business cards (Section 25.3), and allowing WorldCom to review all

1 Qwest training on branding requirements. These provisions go totally beyond what is
2 required by law and should be rejected.

3 **F. AT&T Section J — Forecasting**

4 As Qwest has stated above, this issue has been resolved to the satisfaction of
5 the parties in other workshops and should not be re-addressed in this workshop.

6 **CONCLUSION**

7 As I state in my affidavit, any contractual arrangement between two parties
8 contains certain standard provisions that protect each party's rights under the contract.
9 The proposed general terms and conditions of the SGAT protect the rights and define
10 the obligations of each party that accepts the SGAT in lieu of negotiating an
11 interconnection agreement in a balanced and fair manner.

12 The general terms and conditions specifically addressed in my testimony are
13 reasonable and generally accepted in the provision of telecommunications services
14 throughout the industry. For these reasons, the referenced terms and conditions should
15 be adopted as modified.

BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL

Chairman

JIM IRVIN

Commissioner

MARC SPITZER

Commissioner

**IN THE MATTER OF QWEST
CORPORATION'S
COMPLIANCE WITH SECTION 271 OF
TELECOMMUNICATIONS ACT OF 1996**

DOCKET NO. T-00000B-97-238

EXHIBITS OF

LARRY B. BROTHERRSON
Re: Terms and Conditions
and BFR

QWEST CORPORATION

May 15, 2001

INDEX OF EXHIBITS

DESCRIPTION

EXHIBIT

Statement of Generally Available Terms and Conditions

LBB 1

Special Request Process Application Form

LBB 2

EXHIBIT

LBB 1

**STATEMENT OF GENERALLY AVAILABLE
TERMS AND CONDITIONS FOR INTERCONNECTION,
UNBUNDLED NETWORK ELEMENTS, ANCILLARY SERVICES,
AND RESALE OF TELECOMMUNICATION SERVICES
PROVIDED BY
QWEST CORPORATION
ARIZONA**

**GENERAL TERMS AND CONDITIONS
WORKSHOP VERSION**

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Section 1.0 - GENERAL TERMS

1.1 This Statement of Generally Available Terms and Conditions ("SGAT") for Interconnection, Unbundled Network Elements, Ancillary Services, and Resale of Telecommunications Services is filed by Qwest Corporation ("Qwest"), a Colorado Corporation with offices at 1801 California Street, Denver, Colorado 80202, pursuant to Section 252(f) of the Telecommunications Act of 1996, for purposes of fulfilling Qwest's obligations under Sections 222, 251(a), (b), and (c), 252, 271, and other relevant provisions of the Act and the rules and regulations promulgated thereunder.

1.2 ~~If this document is being used as the basis for negotiations of an Interconnection Agreement, it is between _____, ("Competitive Local Exchange Carrier" or "CLEC") a _____ corporation and Qwest Corporation ("Qwest"), a Colorado corporation, pursuant to Section 252(f) of the Telecommunications Act of 1996, for purposes of fulfilling Qwest's obligations under Sections 222, 251(a), (b), and (c), 252, 271, and other relevant provisions of the Act and the rules and regulations promulgated thereunder.~~ Intentionally left blank.

1.3 This Agreement ~~SGAT~~ sets forth the terms, conditions and pricing under which Qwest will offer and provide to any requesting CLEC network Interconnection, access to Unbundled Network Elements, Ancillary services, and Telecommunications Services available for resale within the geographical areas in which both Parties are providing local exchange service at that time, and for which Qwest is the incumbent Local Exchange Carrier within the State of Arizona for purposes of providing local Telecommunications Services. This Agreement ~~SGAT~~ is available for the term set forth herein.

1.4 Individual CLECs may adopt this SGAT, in lieu of entering into an individual Interconnection agreement, by signing the Signature Page Section of this SGAT and by delivering a signed copy of this SGAT to Qwest, pursuant to the notification provision of this SGAT. Upon adoption of the SGAT by CLEC, the SGAT becomes an Interconnection agreement between Qwest and CLEC. The date on which Qwest receives an executed copy of this SGAT shall hereafter be referred to as the "Effective Date" of the Agreement between Qwest and CLEC.

1.5 This SGAT, once it is approved or permitted to go into effect by the Commission, offers CLECs an alternative to negotiating an individual Interconnection agreement with Qwest or adopting an existing approved Interconnection agreement between Qwest and another CLEC pursuant to Section 252(i) of the Act. In this respect, neither the submission nor approval of this SGAT nor any provision herein shall affect Qwest's willingness to negotiate an individual agreement with any requesting carrier pursuant to Section 252 of the Telecommunications Act of 1996.

1.6 Qwest may modify this SGAT prior to the date it is approved or permitted to go into effect. If Qwest files a modification, the section modified shall be considered withdrawn, and the section as modified will be approved or permitted to go into effect pursuant to the Schedule for Review set forth in 252(f) of the Act. For the purposes of the Schedule for Review set forth in section 252(f) of the Act, the sixty-calendar-day timeframe for this SGAT to take effect shall commence from the filing of this SGAT and shall not be affected by the filing of any modification.

1.7 ~~Following the date this SGAT is approved or allowed to take effect, Qwest may file amendments to this SGAT, which shall be approved or permitted to take effect pursuant to the~~

~~Schedule for Review set forth in Section 252(f) of the Act. At the time any amendment is filed, the section amended shall be considered withdrawn, and no CLEC may adopt the section considered withdrawn following the filing of any amendment, even if such amendment has not yet been approved or allowed to take effect. Any modification to the SGAT by Qwest will be accomplished through Section 252 of the Act.~~

1.7.1 Notwithstanding the above or anything contained in Section 1 of this SGAT, if the Commission orders, or Qwest chooses to offer and CLEC desires to purchase, new Interconnection services, access to additional Unbundled Network Elements, additional ancillary services or Telecommunications Services available for resale which are not contained in this SGAT, no formal amendment to the Interconnection Agreement is necessary. Qwest will notify CLEC of the availability of these new services through the product notification process through the Co-Provider Industry Change Management Process ("CICMP"). CLEC must first update the relevant section(s) of the New Product Questionnaire to establish ordering and billing processes. Then by placing its orders, CLEC agrees to abide by all of the then current rates, terms and conditions as set forth in the then current template agreement applicable to such new services. If CLEC wishes to negotiate an Amendment with different terms and conditions than defined in the then current template agreement, CLEC agrees to abide by those terms and conditions until the Amendment is approved and a parallel processing letter agreement is executed.

1.7.2 Either Party may request an amendment to the Agreement at any time by providing to the other Party in writing information about the desired amendment and proposed language changes. If the Parties have not reached agreement on the requested amendment within sixty (60) calendar days after receipt of the request either Party may pursue resolution of the amendment through the Dispute Resolution provisions of this Agreement.

1.8 Because this SGAT is Qwest's standard contract offer, CLECs with a current Interconnection Agreement may opt into, through Section 252(i) of the Act, any provision of the SGAT by executing an appropriate amendment to its current Interconnection Agreement.

1.8.1 When opting into a provision, Qwest may require CLEC to accept legitimately related provisions to ensure that the provision retains the context set forth in the SGAT. At all times, Qwest bears the burden of establishing that an SGAT provision is legitimately related.

1.8.2 To opt into a provision of the SGAT through Section 252(i), CLEC must provide Qwest with written notice of such intention specifying in detail the provisions of the SGAT selected in the form of a proposed amendment to the Interconnection Agreement which has been signed by the CLEC. Qwest shall make a form or sample amendment as well as the currently effective SGAT, available in electronic form for use by CLEC to prepare the written notice. Once Qwest receives such written notice, it shall have a reasonable period of time to submit a formal written response either accepting the change and signing the amendment or identifying those additional provisions that Qwest believes are legitimately related and must also be included as part of the amendment. If Qwest identifies additional provisions that Qwest believes are legitimately related Qwest shall specify the provisions in the proposed amendment, if any, to which the additional provisions are not legitimately related and which could be included in a revised proposed amendment that would be acceptable to Qwest. Under

ordinary circumstances, a reasonable period of time shall be deemed to be fifteen (15) business days. In extraordinary circumstances, where CLEC's requested modification is complex, Qwest shall have additional time to perform its review. When such extraordinary circumstances exist, Qwest will notify CLEC in writing within fifteen (15) business days from the notice and advise CLEC that additional time is necessary. In no event shall a reasonable period of time be deemed to be greater than twenty (20) business days from the time of CLEC's notice.

1.8.3 If Qwest has identified additional provisions that Qwest believes are legitimately related and has specified provisions in the proposed amendment to which those provisions are not legitimately related, CLEC may provide Qwest with a revised proposed amendment that deletes the disputed provisions, which Qwest shall accept and sign. Regardless of whether CLEC provides Qwest with a revised proposed amendment, if CLEC disputes Qwest's written response that additional SGAT provisions are legitimately related, then CLEC may immediately demand that the dispute be submitted to dispute resolution and CLEC shall submit such dispute to dispute resolution within fifteen (15) days from such receipt of Qwest's response. CLEC may, at its sole option, elect to have the dispute resolution conducted through one of the following methods of dispute resolution:

1.8.3.1 The dispute may be settled by the Commission. Such dispute resolution shall be conducted pursuant to Commission rules or regulations specifying a procedure for submission, hearing and resolving issues pursuant to Section 252(i) of the Act or rules and regulations specifying procedures for submission of a dispute arising under an Interconnection Agreement, as appropriate. If the Commission shall not have established any such rules or regulations, CLEC may file a complaint with the Commission. The Commission may elect to hear the complaint under expedited procedures.

1.8.3.2 The dispute may be settled by arbitration. Such an arbitration proceeding shall be conducted by a single arbitrator. The arbitration proceedings shall be conducted under the then-current rules of the American Arbitration Association ("AAA"). The Federal Arbitration Act, 9 U.S.C. Sections 1-16, not state law, shall govern the arbitrability of the dispute. All expedited procedures prescribed by AAA rules shall apply. The arbitrator's award shall be final and binding and may be entered in any court having jurisdiction thereof. Except for a finding of bad faith as set forth in 1.8.3.3, each Party shall bear its own costs and attorney's fees, and shall share equally in the fees and expenses of the arbitrator. The arbitration proceedings shall occur in the Phoenix metropolitan area or in another mutually agreed upon location.

1.8.3.3 Each Party to the dispute shall bear the responsibility of paying its own attorney's fees and costs in prosecuting/defending the action. However, if either Party is found to have brought or defended the action in "bad faith", then that Party shall be responsible for reimbursing the other Party for its reasonable attorney's fees and costs in prosecuting or defending the action.

1.8.4 If Qwest accepts a CLEC proposed change to adopt certain SGAT language and signs the amendment, the Parties shall begin abiding by the terms of the amendment immediately upon CLEC's receipt of the signed amendment. Qwest shall be responsible for submitting the proposed change to the Commission for its approval within ten (10) business

days from receipt of the signed amendment. The amendment shall be deemed effective upon approval of the amendment by the Commission.

Section 2.0 - INTERPRETATION AND CONSTRUCTION

2.1 This Agreement ("Agreement") includes this Agreement and all Exhibits appended hereto, each of which is hereby incorporated by reference in this Agreement and made a part hereof. All references to Sections and Exhibits shall be deemed to be references to Sections of, and Exhibits to, this Agreement unless the context shall otherwise require. The headings used in this Agreement are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning of this Agreement. Unless the context shall otherwise require, any reference to any agreement, other instrument (including Qwest or other third party offerings, guides or practices), statute, regulation, rule or Tariff applies to such agreement, instrument, statute, regulation, rule or Tariff as amended and supplemented from time to time (and, in the case of a statute, regulation, rule or Tariff, to any successor provision).

2.2 The provisions in this Agreement are in compliance with and based, in large part, on the existing state of the law, rules, regulations and interpretations thereof, including but not limited to state rules, regulations, and laws, as of the date hereof (the "Existing Rules"). ~~Among the Existing Rules are the results of arbitrated decisions by the Commission, which are currently being challenged by Qwest or CLEC. Among the Existing Rules are certain FCC rules and orders that are the subject of, or affected by, the opinion issued by the Supreme Court of the United States in *AT&T Corp., et al. v. Iowa Utilities Board, et al.* on January 25, 1999. Many of the Existing Rules, including rules concerning which Network Elements are subject to unbundling requirements, may be changed or modified during legal proceedings that follow the Supreme Court opinion. Among the Existing Rules are the FCC's orders regarding BOCs' applications under Section 271 of the Act. Qwest is basing the offerings in this Agreement on the Existing Rules, including the FCC's orders on BOC 271 applications. Nothing in this Agreement shall be deemed an admission by Qwest concerning the interpretation or effect of the Existing Rules or an admission by Qwest that the Existing Rules should not be vacated, dismissed, stayed or modified. Nothing in this Agreement shall preclude or estop Qwest or CLEC from taking any position in any forum concerning the proper interpretation or effect of the Existing Rules or concerning whether the Existing Rules should be changed, dismissed, stayed or modified. To the extent that the Existing Rules are changed, vacated, dismissed, stayed or modified, then this Agreement and all contracts adopting all or part of this Agreement shall be amended to reflect such modification or change of the Existing Rules. Where the Parties fail to agree upon such an amendment within sixty (60) days from the effective date of the modification or change of the Existing Rules, it shall be resolved in accordance with the Dispute Resolution provision of this Agreement. It is expressly understood that this Agreement will be corrected to reflect the outcome of generic proceedings by the Commission for pricing, service standards, or other matters covered by this Agreement. This Section shall be considered part of the rates, terms and conditions of each Interconnection, service and network element arrangement contained in this Agreement, and this Section shall be considered legitimately related to the purchase of each Interconnection, service and network element arrangement contained in this Agreement.~~

2.3 ~~In cases of conflict between Qwest's IRRG-PCAT product descriptions, methods and procedures, or a technical publications, or product Product notification Notifications that pertain to offerings in this SGAT, and this SGAT, and this Agreement, then the rates, terms and~~

conditions of this Agreement SGAT shall prevail over such ~~IRRG-PCAT~~ product descriptions, methods and procedures, or a ~~technical publications~~ or Product Notifications. ~~technical publication~~ Qwest will submit such proposed clarifications to these documents under the co-provider change management process ("CICMP") described in Section 12 of this SGAT.-

Section 3.0 - IMPLEMENTATION SCHEDULE CLEC INFORMATION

3.1 Except as otherwise required by law, Qwest will not provide or establish Interconnection, Unbundled Network Elements, ancillary services and/or resale of Telecommunications Services in accordance with the terms and conditions of this Agreement prior to CLEC's execution of this Agreement. ~~Thereupon, t~~The Parties shall complete Qwest's "CLEC Questionnaire," and ~~negotiate an Interconnection implementation schedule as it applies~~ to CLEC's obtaining of Interconnection, Unbundled Network Elements, ancillary services, and/or resale of Telecommunications Services hereunder.

3.2 Prior to placing any orders for services under this Agreement, the Parties will jointly complete Qwest's "CLEC Questionnaire." This questionnaire will then be used to:

Determine geographical requirements;

Identify CLEC Identification Codes;

Determine Qwest system requirements to support CLEC's specific activity;

Collect credit information;

Obtain billing information;

Create summary bills;

Establish input and output requirements;

Create and distribute Qwest and CLEC contact lists; and Identify CLEC hours and holidays.

~~3.3 Prior to placing any orders for services under this Agreement, the Parties will finalize an Interconnection implementation schedule. Subject to the terms and conditions of this Agreement, each Party shall exercise reasonable efforts to adhere to the Interconnection implementation schedule.~~Intentionally Left Blank

~~3.4 Intentionally Left Blank CLEC will provide an initial two year forecast prior to placing any orders for service under this Agreement. During the first year of the term of this Agreement, the forecast shall be updated and provided to Qwest on a quarterly basis. During the remaining term of this Agreement, CLEC will provide updated forecasts from time to time, as requested by Qwest. The information provided pursuant to this paragraph shall be considered Proprietary Information under the Nondisclosure Section of this Agreement. The initial forecast will minimally provide:~~

~~3.4.1 The date service will be offered (by city and/or state);~~

~~3.4.2 The type and quantity of service(s) which will be offered;~~

~~3.4.3 CLEC's anticipated order volumes; and~~

~~3.4.4 CLEC's key contact personnel.~~

Section 4.0 - DEFINITIONS

4.1 "Access Service Request" or "ASR" means the industry standard forms and supporting documentation used for ordering Access Services. The ASR will be used to order trunking and facilities between CLEC and Qwest for Local Interconnection Service.

4.2 "Access Services" refers to the interstate and intrastate switched access and private line transport services offered for the origination and/or termination of interexchange traffic.

4.3 "Act" means the Communications Act of 1934 (47 U.S.C. 151 et. seq.), as amended by the Telecommunications Act of 1996, and as from time to time interpreted in the duly authorized rules and regulations of the FCC or the Commission.

4.4 "Application Date" or "APP" means the date CLEC provides Qwest a firm commitment and sufficient information to provide service.

4.5 "Automatic Number Identification" or "ANI" means a Feature Group D signaling parameter which refers to the number transmitted through a network identifying the billing number of the calling party.

4.6 "Basic Exchange Features" are optional end user switched services that include, but are not necessarily limited to: Automatic Call Back; Call Trace; Caller ID and Related Blocking Features; Distinctive Ringing/Call Waiting; Selective Call Forward; and Selective Call Rejection.

4.7 "Basic Exchange Telecommunications Service" means a service offered to end users which provides the end user with a telephonic connection to, and a unique local telephone number address on, the public switched telecommunications network, and which enables such end user to generally place calls to, or receive calls from, other stations on the public switched telecommunications network. Basic residence and business line services are Basic Exchange Telecommunications Services. As used solely in the context of this Agreement and unless otherwise agreed, Basic Exchange Telecommunications Service includes access to ancillary services such as 911, directory assistance and operator services.

4.8 "Bona Fide Request" or "BFR" means a request for a new Interconnection or unbundled element not already available in this Agreement for the provision of local telecommunications services. Telecommunications Services.

4.9 "Busy Line Verify/Busy Line Interrupt" or "BLV/BLI Traffic" means a call to an operator service in which the caller inquires as to the busy status of or requests an interruption of a call on another end user's Basic Exchange Telecommunications Service line.

4.10 "Calling Party Number" or "CPN" is a Common Channel Signaling (~~"CCS"~~)(CCS) parameter which refers to the number transmitted through a network identifying the calling party. Reference Qwest Technical Publication 77342.

4.11 "Central Office Switch" means a switch used to provide Telecommunications Services, including, but not limited to:

4.11.1 "End Office Switches" which are used to terminate end user station loops, or equivalent, for the purpose of interconnecting to each other and to trunks; and

4.11.2 "Tandem Office Switches" which are used to connect and switch trunk circuits between and among other End Office Switches. CLEC switch(es) shall be considered Tandem Office Switch(es) to the extent such switch(es) actually serve(s) the same a comparable geographic area as Qwest's Tandem Office Switch or is used to connect and switch trunk circuits between and among other Central Office Switches. A fact based consideration of geography and function should be used to classify any switch. Qwest access tandems typically provide connections for exchange access and toll traffic, and Jointly Provided Switched Access traffic while local tandems provide connections for Exchange Service (EAS/Local) traffic. CLECs may also utilize a Qwest Access Tandem for the exchange of local traffic as set forth in this Agreement.

4.12 "Collocation" is an arrangement where Qwest provides space in Qwest Premises for the placement of CLEC's equipment to be used for the purpose of Interconnection or access to Qwest Unbundled Network Elements. Qwest offers eight (8) Collocation arrangements: Virtual Collocation, Caged Physical Collocation, Cageless Physical Collocation, Shared Caged Physical Collocation, Adjacent Collocation, Interconnection Distribution Frame Collocation, Common Area Splitter Collocation, and Remote Collocation.

4.12(a) "Collocation – Point of Interconnection" or "C-POI" is the point outside Qwest's Wire Center where the CLEC's fiber facility meets Qwest's Fiber Entrance Facility, except where the CLEC uses an Express Fiber Entrance Facility. In either case, Qwest will extend or run the Fiber Entrance Facility to the CLEC's Collocation Space.

4.13 "Commission" means the Arizona Corporation Commission.

4.14 "Common Channel Signaling" or "CCS" means a method of digitally transmitting call set-up and network control data over a special signaling network fully separate from the public voice switched network elements that carry the actual call.

4.15 "Competitive Local Exchange Carrier" or "CLEC" refers to a Party that has submitted a request, pursuant to Sections 1 and 3 of this Agreement, to obtain Interconnection, access to Unbundled Network Elements, ancillary services, or resale of Telecommunications Services pursuant to the terms of this Agreement. A CLEC is an entity authorized to provide Local Exchange Service that does not otherwise qualify as an Incumbent Local Exchange Carrier (~~"ILEC"~~)-(ILEC).

4.16 "Designed, Verified and Assigned Date" or "DVA" means the date on which implementation groups are to report that all documents and materials have been received and are complete.

4.17 "Digital Signal Level 0" or "DS0" is the 64 Kbps standard speed for digitizing one voice conversation using pulse code modulation. There are 24 DS0 channels in a DS1.

4.18 "Digital Signal Level 1" or "DS1" means the 1.544 Mbps first-level signal in the time-division multiplex hierarchy. In the time-division multiplexing hierarchy of the telephone network, DS1 is the initial level of multiplexing. There are 28 DS1s in a DS3.

4.19 "Digital Signal Level 3" or "DS3" means the 44.736 Mbps third-level signal in the time-division multiplex hierarchy. In the time-division multiplexing hierarchy of the telephone network, DS3 is defined as the third level of multiplexing.

4.20 "Enhanced Services" means any service offered over common carrier transmission facilities that employ computer processing applications that act on format, content, code, protocol or similar aspects of a subscribers transmitted information; that provide the subscriber with different or restructured information; or involve end-user interaction with stored information.

4.21 "Exchange Message Record" or "EMR" is the standard used for exchange of telecommunications message information between telecommunications providers for billable, non-billable, sample, settlement and study data. EMR format is contained in BR-010-200-010 CRIS Exchange Message Record, a ~~Bellcore~~ Telcordia document that defines industry standards for exchange message records.

4.22 "Exchange Service" or "Extended Area Service (EAS)/Local Traffic" means traffic that is originated and terminated within the local calling area as defined by Qwest's then current EAS/local serving areas, and as determined by the Commission.

4.23 "Facility Complete Date" or "FCD" means the date all pre-service tests are performed, including stress tests.

4.23 (a) "Finished Services" means complete ~~end-to-end~~ end to end services offered by Qwest to wholesale or retail customers. Finished Services do not include Unbundled Network Elements or combinations of Unbundled Network Elements. Finished Services include voice messaging, Qwest provided DSL, Access Services, private lines, retail services, ~~resold services~~ and ~~Local Interconnection Services~~, resold services.

4.24 "Firm Order Confirmation" or "FOC" means the notice Qwest provides to CLEC to confirm that the CLEC Local Service Order (LSR) has been received and has been successfully processed. The FOC confirms the schedule of dates committed to by Qwest for the provisioning of the service requested.

4.24(a) Individual Case Basis - (ICB) - Each UNE or resale product marked as ICB will be handled individually on a pricing and/or interval commitment basis. Where ICB appears, CLEC should contact their account team for pricing, ordering, provisioning or maintenance information.

4.25 "Integrated Digital Loop Carrier" means a subscriber ~~loop~~ Loop carrier system, which integrates multiple voice channels within the switch on a DS1 level signal.

4.26 ~~"Interconnect & Resale Resource Guide" (IRRG) is a Qwest document that provides information needed to request services available under this Agreement. Qwest agrees that CLEC shall not be held to the requirements of the IRRG. The IRRG is available on Qwest's Web site:~~

~~<http://www.uswest.com/carrier/guides/interconnect/index.html>~~ Intentionally Left
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4.27 "Interconnection" is as described in the Act and refers to the connection between networks for the purpose of transmission and routing of telephone Exchange Service traffic, Exchange Access and Jointly Provided Switched Access traffic.

4.28 "Interexchange Carrier" (IXC) means a carrier that provides InterLATA or IntraLATA Toll services.

4.29 "Internet Related Traffic" refers to dial-up access through an entity which may include computer processing, protocol conversions, information storage or routing with transmission to enable users to access internet content or data services.

4.30 "Exchange Access (IntraLATA Toll) is defined in accordance with Qwest's current IntraLATA toll serving areas, as determined by Qwest's state and interstate Tariffs and excludes toll provided using Switched Access purchased by an IXC.

4.31 "Local Exchange Carrier" (LEC) means any carrier that is engaged in the provision of telephone Exchange Service or Exchange Access. Such term does not include a carrier insofar as such carrier is engaged in the provision of a commercial mobile service under Section 332(c) of the Act, except to the extent that the FCC finds that such service should be included in the definition of such term.

4.32 "Local Interconnection Service (LIS) Entrance Facility" is a DS1 or DS3 facility that extends from CLEC's switch location or Point of Interconnection (POI) to the Qwest Serving Wire Center. An Entrance Facility may not extend beyond the area served by the Qwest Serving Wire Center.

4.33 "Local Interconnection Service (LIS)" is the Qwest product name for its provision of Interconnection as described in Section 7 of this ~~Agreement.~~ Agreement.

4.34 "Local Loop Transmission" or "Loop" or "Unbundled Loop" is defined as a transmission facility between a distribution frame (or its equivalent) in an incumbent LEC Central Office and the Loop Demarcation Point ~~central office and the Loop demarcation point~~ at an end user's premises. — The Local Loop network element includes all features, functions, and capabilities of such transmission facility. Those features, functions, and capabilities include, but are not limited to, ~~dark fiber,~~ Dark Fiber, attached electronics (except those electronics used for the provision of advanced services, such as Digital Subscriber Line Access Multiplexers (DSLAM)), and line conditioning. The Local Loop includes, but is not limited to, DS1, DS3, fiber, and other high capacity Loops.

4.35 "Local Service Request" or "LSR" means the industry standard forms and supporting documentation used for ordering local services.

4.36 "Main Distribution Frame" or "MDF" means a Qwest distribution frame (e.g., COSMIC™ frame) used to connect Qwest cable pairs and line and trunk equipment terminals on a Qwest switching system.

4.37 "MECAB" refers to the Multiple Exchange Carrier Access Billing (MECAB) document prepared by the Billing Committee of the Ordering and Billing Forum (OBF), that functions under the auspices of the Carrier Liaison Committee of the Alliance for Telecommunications Industry Solutions. The MECAB document, published by ~~Bellcore~~ Telcordia as Special Report SR-BDS-000983, contains the recommended guidelines for the billing of an Access Service.

4.38 "MECOD" refers to the Multiple Exchange Carriers Ordering and Design (MECOD) Guidelines for Access Services - Industry Support Interface, a document developed by the Ordering/Provisioning Committee under the auspices of the Ordering and Billing Forum (OBF), that functions under the auspices of the Carrier Liaison Committee of the Alliance for Telecommunications Industry Solutions. The MECOD document establishes recommended guidelines for processing orders for Access Service.

4.39 "Meet-Point Billing" or "MPB" or "Jointly Provided Switched Access" refers to an arrangement whereby two LECs (including a LEC and CLEC) jointly provide Switched Access Service ~~including phone to phone voice interexchange traffic that is transmitted over a carrier's packet-switched network using protocols such as TCP/IP to an Interexchange Carrier, with each LEC (or CLEC) receiving an appropriate share of the revenues from the IXC as defined by their effective access Tariffs.~~

4.40 "Mid-Span Meet" is a Point of Interconnection between two networks, designated by two Telecommunications Carriers, at which one carrier's responsibility for service begins and the other carrier's responsibility ends.

4.39(a)4.40(a) "Miscellaneous Charges" mean charges that Qwest may assess in addition to recurring and non-recurring rates set forth in Exhibit A, for activities CLEC requests Qwest to perform, activities CLEC authorizes, or charges that are a result of CLEC's actions, such as cancellation charges. Miscellaneous Charges are not already included in Qwest's recurring or non-recurring rates. Miscellaneous Charges are listed in Exhibit A and include the following activities or charges: additional engineering, additional labor installation, additional labor other, testing and maintenance, maintenance of service, additional cooperative acceptance testing, nonscheduled cooperative testing, nonscheduled manual testing, additional dispatch, date change, design change, expedite charge and cancellation charge. These activities are described in Qwest's Access Services Tariff.

4.40 ~~"Mid-Span Meet" is a Point of Interconnection between two networks, designated by two Telecommunications Carriers, at which one carrier's responsibility for service begins and the other carrier's responsibility ends.~~

4.41 "North American Numbering Plan" or "NANP" means the numbering plan used in the United States that also serves Canada, Bermuda, Puerto Rico, Guam, the Commonwealth of the Marianna Islands and certain Caribbean Islands. The NANP format is a 10-digit number that consists of a 3-digit NPA code (commonly referred to as the area code), followed by a 3-digit NXX code and 4-digit line number.

4.42 "NXX" means the fourth, fifth and sixth digits of a ten-digit telephone number.

4.43 "Party" means either Qwest or CLEC and "Parties" means Qwest and CLEC.

4.44 "Plant Test Date" or "PTD" means the date acceptance testing is performed with CLEC.

4.45 "Point of Interface", "Point of Interconnection," or "POI" is a demarcation between the networks of two LECs (including a LEC and CLEC). The POI is that point where the exchange of traffic takes place.

4.46 "Port" means a line or trunk connection point on a central office switch but does not include switch features.

4.46(a) "Premises" refers to Qwest's central offices and Serving Wire Centers; all buildings or similar structures owned, leased, or otherwise controlled by Qwest that house its network facilities; all structures that house Qwest facilities on public rights-of-way, including but not limited to vaults containing ~~loop~~Loop concentrators or similar structures; and all land owned, leased, or otherwise controlled by Qwest that is adjacent to these central offices, Wire Centers, buildings and structures.

4.46(b) "Product Catalog" or "PCAT" is a Qwest document that provides information needed to request services available under this Agreement. Qwest agrees that CLEC shall not be held to the requirements of the PCAT. The PCAT is available on Qwest's Web site:

<http://www.uswest.com/wholesale/pcat/>

4.47 "Proof of Authorization" (~~"POA"~~)(POA). POA shall consist of verification of the end user's selection and authorization adequate to document the end user's selection of its local service provider. Section 5.3 of this Agreement lists acceptable forms of documentation.

4.48 "Rate Center" means the specific geographic point (associated with one or more specific NPA-NXX codes and various Wire Centers), being used for billing and measuring Telecommunications Service. For example, a Rate Center will normally include several Wire Centers within its geographic area, with each Wire Center having one or more NPA-NXXs.

4.49 "Rate Center Area" is the geographic area within which Basic Exchange Services are provided for NPA-NXX designations associated with a particular Rate Center.

4.49 (a) "Ready for Service" or "RFS" – A Collocation job is considered to be Ready for Service when Qwest has completed all operational work in accordance with CLEC Application and makes functional space available to CLEC. Such work includes but is not necessarily limited to: DC power (fuses available, Battery Distribution Fuse Board (BDFB) is powered, and cables between the CLEC and power are terminated), cage enclosures, primary AC outlet, cable racking, and circuit terminations (e.g., fiber jumpers are placed between the outside plant fiber distribution panel and the central office fiber distribution panel serving CLEC) and APOT/CFA are complete, telephone service, and other services and facilities ordered by CLEC for provisioning by the RFS date.

4.50 "Records Issue Date" or "RID" means the date that all design and assignment information is sent to the necessary service implementation groups.

4.50(a) "Remote Premises" means all Qwest Premises as defined in 4.46(a), other than Qwest Wire Centers or adjacent to Qwest Wire Centers. Such Remote Premises include controlled environmental vaults, controlled environmental huts, cabinets, pedestals and other remote terminals.

4.51 "Reseller" is a category of Local Exchange Service provider that obtains dial tone and associated Telecommunications Services from another provider through the purchase of finished services for resale to its end users.

4.52 "Scheduled Issued Date" or "SID" means the date the order is entered into Qwest's order distribution system.

4.53 "Service Control Point" or "SCP" means a signaling end point that acts as a database to provide information to another signaling end point (i.e., Service Switching Point or another SCP) for processing or routing certain types of network calls. A query/response mechanism is typically used in communicating with an SCP.

4.54 "Serving Wire Center" denotes the Wire Center from which dial tone for Local Exchange Service would normally be provided to a particular customer premises.

4.55 "Service Date" or "SD" means the date service is made available to the end-user. This also is referred to as the "Due Date."

4.56 "Signaling Transfer Point" or "STP" means a signaling point that performs message routing functions and provides information for the routing of messages between signaling end points. An STP transmits, receives and processes Common Channel Signaling (~~"CCS"~~)(CCS) messages.

4.57 "Switched Access Service" means the offering of transmission and switching services to Interexchange Carriers for the purpose of the origination or termination of telephone toll service. Switched Access Services include: Feature Group A, Feature Group B, Feature Group D, ~~Phone-to-Phone IP Telephony~~, 8XX access, and 900 access and their successors or similar Switched Access Services. Switched Access traffic, as specifically defined in Qwest's interstate Switched Access Tariffs, is traffic that originates at one of the Party's end users and terminates at an IXC point of presence, or originates at an IXC point of presence and terminates at one of the Party's end users, whether or not the traffic transits the other Party's network.

4.58 "Tariff" as used throughout this Agreement refers to Qwest interstate Tariffs and state Tariffs, price lists, price schedules and catalogs.

4.59 "Telecommunications Carrier" means any provider of Telecommunications Services, except that such term does not include aggregators of Telecommunications Services (as defined in Section 226 of the Act). A Telecommunications Carrier shall be treated as a common carrier under the Act only to the extent that it is engaged in providing Telecommunications Services, except that the Federal Communications Commission shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage.

4.60 "Telecommunications Services" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

4.61 "Unbundled Network Element Platform (UNE-P)" – is a combination of Unbundled Network Elements, including Unbundled Loop, Unbundled Local Switching and Shared Transport. There are several forms of UNE-P, including but not limited to single line residence, single line business, and PBX Trunks.

4.62 "UNE Combination" means a combination of Unbundled Network Elements provided for in this Agreement.

4.63 "Wire Center" denotes a building or space within a building that serves as an aggregation point on a given carrier's network, where transmission facilities are connected or switched. Wire Center can also denote a building where one or more ~~Central Offices,~~central offices, used for the provision of Basic Exchange Telecommunications Services and Access Services, are located.

4.64 "Wired and Office Tested Date" or "WOT" means the date by which all intraoffice wiring is completed, all plug-ins optioned and aligned, frame continuity established, and the interoffice facilities, if applicable, are tested. This includes the date that switching equipment, including translation loading, is installed and tested.

4.65 Terms not otherwise defined here but defined in the Act shall have the meaning defined there.

Section 5.0 - TERMS AND CONDITIONS

5.1 General Provisions

5.1.1 Each Party shall use its best efforts to comply with the Implementation Schedule provisions that will be mutually agreed upon by the Parties.

5.1.2 The Parties are each solely responsible for participation in and compliance with national network plans, including the National Network Security Plan and the Emergency Preparedness Plan.

5.1.3 Neither Party shall use any service related to or use any of the services provided in this Agreement in any manner that interferes with other persons in the use of their service, prevents other persons from using their service, or otherwise impairs the quality of service to other carriers or to either Party's end users. Each Party may discontinue or refuse service if the other Party violates this provision. Upon such violation, either Party shall provide the other Party notice of such violation at the earliest practicable time.

5.1.4 Each Party is solely responsible for the services it provides to its end users and to other Telecommunications Carriers.

5.1.5 The Parties shall work cooperatively to minimize fraud associated with third-number billed calls, calling card calls, and any other services related to this Agreement.

5.1.6 Nothing in this Agreement shall prevent either Party from seeking to recover the costs and expenses, if any, it may incur in (a) complying with and implementing its obligations under this Agreement, the Act, and the rules, regulations and orders of the FCC and the Commission, and (b) the development, modification, technical installation and maintenance of any systems or other infrastructure which it requires to comply with and to continue complying with its responsibilities and obligations under this Agreement.

5.2 Term of Agreement

5.2.1 ~~When this document is used for purposes of negotiating an Interconnection Agreement, this Agreement shall become effective upon Commission approval, the date set forth in Section 1 pursuant to Sections 251 and 252 of the Act. This Agreement shall be binding upon the Parties upon the Effective Date and for a term of two years and shall terminate on~~

5.2.2 Upon expiration of the term of this Agreement, this Agreement shall continue in force and effect until terminated by either Party on one hundred sixty (160) days written notice to the other Party. The date of this notice will be the starting point for the one hundred sixty--(160) day negotiation window under Section 252 of the Act. If the Parties reach agreement, this Agreement will terminate on the date specified in the notice or on the date the agreement is approved by the Commission, whichever is later. If the Parties arbitrate, this Agreement will terminate when the new agreement is approved by the Commission.

~~5.2.2.1 Prior to the conclusion of the term specified above, CLEC may obtain Interconnection services under the terms and conditions of a then-existing agreement to become effective at the conclusion of the term.~~

5.3 Proof of Authorization

5.3.1 ~~Where so indicated in specific sections of this Agreement, e~~Each Party shall be responsible for obtaining and having in its possession Proof of Authorization ("POA") as required by applicable federal and state law, as amended from time to time. ~~POA shall consist of documentation of the end user's selection of its local service provider. Such selection may be obtained in the following ways:~~

5.3.1.1 The end user's electronic or written Letter of Authorization.

5.3.1.2 The end user's electronic authorization by use of an 8XX number.

5.3.1.3 The end user's oral authorization verified by an independent third party (with third party verification as POA).

5.3.2 The Parties shall make POAs available to each other upon request. in accordance with applicable laws and rules. A charge of \$100.00 will be assessed if the POA cannot be provided supporting the change in service provider. If there is a conflict between the end user designation and the other Party's written evidence of its authority, the Parties shall honor the designation of the end user and change the end user back to the previous service provider.

5.4 Payment

5.4.1 Amounts payable under this Agreement are due and payable within thirty (30) calendar days after the date of invoice, or within twenty (20) days after receipt of the invoice, whichever is later. If the payment due date is not a business day, the payment shall be made the next business day.

5.4.2 Qwest may discontinue processing orders for the failure of CLEC to make full payment, less any disputed amount as provided for in Section 5.4.4 of this Agreement, for the services provided under this Agreement within thirty (30) days of the due date on CLEC's bill. Qwest will notify CLEC in writing at least ten (10) days prior to discontinuing the processing of orders. If Qwest does not refuse to accept additional orders on the date specified in the ten (10) days notice, and CLEC's non-compliance continues, nothing contained herein shall preclude Qwest's right to refuse to accept additional orders from the non-complying CLEC without further notice. For order processing to resume, CLEC will be required to make full payment of all past and current charges under this Agreement. Additionally, Qwest may require a deposit (or additional deposit) from CLEC, pursuant to this section. In addition to the other remedies that may be available at law or equity, CLEC reserves the right to seek equitable relief, including injunctive relief and specific performance.

5.4.3 Qwest may disconnect any and all services for failure by CLEC to make full payment, less any disputed amount as provided for in Section 5.4.4 of this Agreement, for the services provided under this Agreement within sixty (60) days of the due date on CLEC's bill. CLEC will pay the Tariff charge required to reconnect each resold end user line disconnected pursuant to this paragraph. Qwest will notify CLEC in writing at least ten (10) business days prior to disconnection of the service(s). In case of such disconnection, all applicable charges, including termination charges, shall become due. If Qwest does not disconnect CLEC's service(s) on the date specified in the ten (10) day notice, and CLEC's noncompliance continues, nothing contained herein shall preclude Qwest's right to disconnect any or all services of the non-complying CLEC without further notice. For reconnection of service to

occur, CLEC will be required to make full payment of all past and current charges under this Agreement. Additionally, Qwest will request a deposit (or additional deposit) from CLEC, pursuant to this section. Qwest agrees, however, that the application of this provision will be suspended for the initial three (3) billing cycles of this Agreement and will not apply to amounts billed during those three (3) cycles. In addition to the other remedies that may be available at law or equity, CLEC reserves the right to seek equitable relief, including injunctive relief and specific performance.

5.4.4 Should CLEC or Qwest dispute, in good faith, any portion of the monthly billing under this Agreement, the Parties will notify each other in writing within thirty (30) calendar days of the receipt of such billing, identifying the amount, reason and rationale of such dispute. At a minimum, CLEC and Qwest shall pay all undisputed amounts due. Both CLEC and Qwest agree to expedite the investigation of any disputed amounts in an effort to resolve and settle the dispute prior to initiating any other rights or remedies.

5.4.4.1 If a Party disputes charges and does not pay such charges by the payment due date, such charges will be subject to late payment charges. If the disputed charges have been withheld and the dispute is resolved in favor of the billing Party, the withholding Party shall pay the disputed amount and applicable late payment charges no later than the second billing period following the resolution. If the disputed charges have been withheld and the dispute is resolved in favor of the disputing Party, the billing Party shall credit the bill of the disputing Party for the amount of the disputed charges no later than the second Bill Date after the resolution of the dispute. If a Party pays the disputed charges and the dispute is resolved in favor of the billing Party, no further action is required.

5.4.4.2 If a Party pays the disputed charges and the dispute is resolved in favor of the disputing Party, the billing Party shall credit the disputing Party's bill for the disputed amount and any associated interest no later than the second bill payment due date after the resolution of the dispute. The interest calculated on the disputed amounts will be the same rate as late payment charges. In no event, however, shall any late payment charges be assessed on any previously assessed late payment charges.

5.4.5 Qwest will determine CLEC's credit status based on previous payment history with Qwest or credit reports such as Dun and Bradstreet. If CLEC has not established satisfactory credit with Qwest according to the above provisions or CLEC is repeatedly delinquent in making its payments, or CLEC is being reconnected after a disconnection of service or discontinuance of the processing of orders by Qwest due to a previous nonpayment situation, Qwest will require a deposit to be held as security for the payment of charges before the orders from CLEC will be provisioned and completed or before reconnection of service. "Repeatedly delinquent" means any payment received thirty (30) calendar days or more after the due date, three (3) or more times during a twelve (12) month period. The deposit may not exceed the estimated total monthly charges for a two (2) month period. The deposit may be a surety bond if allowed by the applicable Commission rules, regulations or Tariffs, a letter of credit with terms and conditions acceptable to Qwest, or some other form of mutually acceptable security such as a cash deposit. Required deposits are due and payable within ten (10) calendar days after demand.

5.4.6 Interest will be paid on cash deposits at the rate applying to deposits under applicable Commission rules, regulations, or Tariffs. Cash deposits and accrued interest will be credited to CLEC's account or refunded, as appropriate, upon the earlier of the two year term or the establishment of satisfactory credit with Qwest, which will generally be one full year of timely

payments in full by CLEC. The fact that a deposit has been made does not relieve CLEC from any requirements of this Agreement.

5.4.7 Qwest may review CLEC's credit standing and modify the amount of deposit required.

5.4.8 The late payment charge for amounts that are billed under this Agreement shall be in accordance with Commission requirements.

5.4.9 CLEC agrees to inform end-user in writing of pending disconnection by CLEC to allow end user to make other arrangements for Telecommunications Services.

5.5 Taxes

5.5.1 ~~Each Party purchasing services hereunder shall pay or otherwise be responsible for all Any federal, state, or local sales, use, excise, gross receipts, transaction or similar taxes, fees or surcharges resulting from the performance of this Agreement shall be borne by the Party upon which the obligation for payment is imposed under applicable law, even if the obligation to collect and remit such taxes is placed upon the other Party. However, where the selling Party is permitted by law to collect such taxes, fees or surcharges from the purchasing Party, such taxes, fees or surcharges shall be borne by the Party purchasing the services. levied against or upon such purchasing Party (or the providing Party when such providing Party is permitted to pass along to the purchasing Party such taxes, fees or surcharges), except Each Party is responsible for any tax on either Party's its corporate existence, status or income. Whenever possible, these amounts shall be billed as a separate item on the invoice. To the extent a sale is claimed to be for resale tax exemption, the purchasing Party shall furnish the providing Party a proper resale tax exemption certificate as authorized or required by statute or regulation by the jurisdiction providing said resale tax exemption. Until such time as a resale tax exemption certificate is provided, no exemptions will be applied. If either Party (the "Contesting Party") contests the application of any tax collected by the other Party (the "Collecting Party"), the collecting Party shall reasonably cooperate in good faith with the Contesting Party's challenge, provided that the Contesting Party pays for any costs incurred by the Collecting Party. The Contesting Party is entitled to the benefit of any refund or recovery resulting from the contest, provided that the Contesting Party is liable for and has paid the tax contested.~~

5.6 Insurance

5.6.1 CLEC shall at all times during the term of this Agreement, at its own cost and expense, carry and maintain the insurance coverage listed below with insurers having a "Best's" rating of B+XIII.

5.6.1.1 Workers' Compensation with statutory limits as required in the state of operation and Employers' Liability insurance with limits of not less than \$100,000 each accident.

5.6.1.2 Commercial General Liability insurance covering claims for bodily injury, death, personal injury or property damage occurring or arising out of the use or occupancy of the premises, including coverage for independent contractor's protection (required if any work will be subcontracted), premises-operations, products and/or completed operations and contractual liability with respect to the liability assumed by CLEC hereunder. The limits of insurance shall not be less than \$1,000,000 each

occurrence and \$2,000,000 general aggregate limit.

5.6.1.3 ~~Comprehensive Business~~ automobile liability insurance covering the ownership, operation and maintenance of all owned, non-owned and hired motor vehicles with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage.

5.6.1.4 Umbrella/Excess Liability insurance in an amount of \$10,000,000 excess of Commercial General Liability insurance specified above. These limits may be obtained through any combination of primary and excess or umbrella liability insurance so long as the total limit is \$11,000,000.

5.6.1.5 "All Risk" Property coverage on a full replacement cost basis insuring all of CLEC personal property situated on or within the premises. CLEC may elect to purchase business interruption and contingent business interruption insurance. As provided in Section 5.8 of this Agreement, Qwest has no liability for loss of profit or revenues should an interruption of service occur.

5.6.2 CLEC shall provide certificate(s) of insurance evidencing coverage, and annually ~~thereafter within ten (10) calendar days of thereafter prior to the renewal of any coverage maintained pursuant to this Section.~~ Such certificates shall (1) name Qwest as an additional insured under commercial general liability coverage as respects Qwest's interests/liability arising from CLEC's operations for which CLEC has legally assumed responsibility herein; (2) provide Qwest thirty (30) calendar days prior written notice of cancellation of, material change or exclusions in the policy(s) to which certificate(s) relate; (3) indicate that, to the extent Qwest is an additional insured, coverage is primary and not excess of, or contributory with, any other valid and collectible insurance purchased by Qwest; and (4) ~~provide acknowledge severability of interest/cross liability coverage for those policies under which Qwest is an additional insured.~~

5.7 Force Majeure

5.7.1 Neither Party shall be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence including, without limitation, acts of nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, ~~equipment failure,~~ power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities or acts or omissions of transportation carriers (collectively, a "Force Majeure Event"). The Party affected by a Force Majeure Event shall give prompt notice to the other Party, shall be excused from performance of its obligations hereunder on a day to day basis to the extent those obligations are prevented by the Force Majeure Event, and shall use reasonable efforts to remove or mitigate the Force Majeure Event. In the event of a labor dispute or strike the Parties agree to provide service to each other at a level equivalent to the level they provide themselves.

5.8 Limitation of Liability

5.8.1 ~~Except for losses relating to or arising out of any act or omission in its performance of services or functions provided under this Agreement, each Party shall be liable to the other for direct damages for any loss, defect or equipment failure including without limitation any~~

~~penalty, reparation or liquidated damages assessed by the Commission or under a Commission-ordered agreement (including without limitation penalties or liquidated damages assessed as a result of cable cuts), resulting from the causing Party's conduct or the conduct of its agents or contractors. Each Party's liability to the other Party for any loss relating to or arising out of any act or omission in its performance under this Agreement, whether in contract, warranty, strict liability, or tort, including (without limitation) negligence of any kind, shall be limited to the total amount that is or would have been charged to the other Party by such breaching Party for the service(s) or function(s) not performed or improperly performed. Each Party's liability to the other Party for any other losses shall be limited to the total amounts charged to CLEC under this Agreement during the contract year in which the cause accrues or arises.~~

5.8.2 Neither Party shall be liable to the other for indirect, incidental, consequential, or special damages, including (without limitation) damages for lost profits, lost revenues, lost savings suffered by the other Party regardless of the form of action, whether in contract, warranty, strict liability, tort, including (without limitation) negligence of any kind and regardless of whether the Parties know the possibility that such damages could result.

5.8.3 ~~Except for indemnity obligations, or as otherwise set forth in this Section, each Party's liability to the other Party for any loss relating to or arising out of any act or omission in its performance of services or functions provided under this Agreement, whether in contract or in tort, shall be limited to the total amount that is or would have been charged to the other Party by such breaching Party for the service(s) or function(s) not performed or improperly performed, including without limitation direct damages for loss of or damaged to CLEC's collocated equipment located within the Collocation space.~~ Intentionally Left Blank

5.8.4 Nothing contained in this Section 5.8 shall limit either Party's liability to the other for willful or intentional misconduct.

5.8.5 Nothing contained in this Section 5.8 shall limit either Party's obligations of indemnification as specified in the Indemnity Section 5.9 of this Agreement, nor shall this Section 5.8 limit a Party's liability for failing to make any payment due under this Agreement.

5.8.6 CLEC is liable for all fraud associated with service to its end-users and accounts. Qwest takes no responsibility, will not investigate, and will make no adjustments to CLEC's account in cases of fraud unless such fraud is the result of any intentional act or gross negligence of Qwest. Notwithstanding the above, if Qwest becomes aware of potential fraud with respect to CLEC's accounts, Qwest will promptly inform CLEC and, at the direction and sole cost of CLEC, take reasonable action to mitigate the fraud where such action is possible.

5.9 Indemnity

5.9.1 ~~With respect to third party claims, t~~The Parties agree to indemnify each other as follows~~that the following constitute the sole indemnification obligations between and among the parties:~~

5.9.1.1 ~~Except for claims made by end users of one Party against the other Party, which claims are based on defective or faulty services provided by the other Party to the one Party, e~~Each of the Parties agrees to release, indemnify, defend and hold harmless the other Party and each of its officers, directors, employees and agents (each an "Indemnatee") from and against and in respect of any loss, debt, liability, damage,

obligation, claim, demand, judgment or settlement of any nature or kind, known or unknown, liquidated or unliquidated including, but not limited to, reasonable costs and expenses (including attorneys' fees), whether suffered, made, instituted, or asserted by any other Party or person or entity, for invasion of privacy, personal bodily injury to or death of any person or persons, or for loss, damage to, or destruction of tangible property, whether or not owned by others, up to the total amount that is or would have been charged for services not performed or improperly performed, resulting from the indemnifying Party's performance, breach of applicable law, or status of its employees, agents and subcontractors; or for breach of or failure to perform under this Agreement, regardless of the form of action, whether in contract, warranty, strict liability, or tort, including (without limitation) negligence of any kind.

5.9.1.2 In the case of a loss alleged or incurred by an end user of either Party, the Party whose end user alleged or incurred such loss (Indemnifying Party) shall defend and indemnify the other Party (Indemnified Party) against any and all such claims or loss by its end users regardless of whether the underlying service was provided or unbundled element was provisioned by the Indemnified Party, unless the loss was caused by the willful misconduct of the Indemnified Party. Where the third party claim is made by (or through) an end user of one Party against the other Party, which claim is based on defective or faulty services provided by the other Party to the one Party, then there shall be no obligation of indemnity unless the act or omission giving rise to the defective or faulty services is shown to be intentional and malicious misconduct of the other Party.

5.9.1.3 If the claim is made by (or through) an end user and where a claim is in the nature of a claim for invasion of privacy, libel, slander, or other claim based on the content of a transmission, and it is made against a Party who is not the immediate provider of the Telecommunications Service to the end user (the indemnified provider), then in the absence of fault or neglect on the part of the indemnified provider, the Party who is the immediate seller of such Telecommunications Service shall indemnify, defend and hold harmless the indemnified provider from such claim. Intentionally Left Blank

5.9.1.4 For purposes of this Section 5.9.1.2, where the Parties have agreed to provision line sharing using a POTS splitter: "end user" means the DSL provider's end user for claims relating to DSL and the voice service provider's end user for claims relating to voice service. "claims made by end users or customers of one Party against the other Party" refers to claims relating to the provision of DSL services made against the Party that provides voice services, or claims relating to the provision of voice service made against the Party that provides DSL services; and "immediate provider of the Telecommunications Service to the end user or customer" refers to the Party that provides DSL service for claims relating to DSL services, and to the Party that provides voice service for claims relating to voice services. For purposes of this Section, "customer" refers to the immediate purchaser of the telecommunications service, whether or not that customer is the ultimate end user of that service.

5.9.2 The indemnification provided herein shall be conditioned upon:

5.9.2.1 The Indemnified Party shall promptly notify the Indemnifying Party of any action taken against the Indemnified Party relating to the indemnification. Failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of any liability that the Indemnifying Party might have, except to the extent that such failure prejudices the Indemnifying Party's ability to defend such claim.

5.9.2.2 ¶ If the Indemnifying Party wishes to defend against such action, it shall give written notice to the Indemnified Party of acceptance of the defense of such action. In such event, the Indemnifying Party shall have sole authority to defend any such action, including the selection of legal counsel, and the Indemnified Party may engage separate legal counsel only at its sole cost and expense. In the event that the Indemnifying Party does not accept the defense of the action, the Indemnified Party shall have the right to employ counsel for such defense at the expense of the Indemnifying Party. Each Party agrees to cooperate with the other Party in the defense of any such action and the relevant records of each Party shall be available to the other Party with respect to any such defense.

5.9.2.3 In no event shall the Indemnifying Party settle or consent to any judgment pertaining to any such action without the prior written consent of the Indemnified Party. In the event the Indemnified Party withholds consent, the Indemnified Party may, at its cost, take over such defense, provided that, in such event, the Indemnifying Party shall not be responsible for, nor shall it be obligated to indemnify the relevant Indemnified Party against, any cost or liability in excess of such refused compromise or settlement.

5.10 Intellectual Property

5.10.1 Each Party hereby grants to the other Party the limited, personal and nonexclusive right and license to use its patents, copyrights and trade secrets but only to the extent necessary to implement this Agreement or specifically required by the then-applicable federal and state rules and regulations relating to Interconnection and access to telecommunications facilities and services, and for no other purposes. Nothing in this Agreement shall be construed as the grant to the other Party of any rights or licenses to trademarks.

5.10.2 The rights and licenses above are granted "AS IS, WITH ALL FAULTS", and the other Party's exercise of any such right and license shall be at the sole and exclusive risk of the other Party. Neither Party shall have any obligation to defend, indemnify or hold harmless the other based on or arising from any claim, demand, or proceeding (hereinafter "claim") by any third party alleging or asserting that the use of any circuit, apparatus, or system, or the use of any software, or the performance of any service or method, or the provision of any facilities by either Party under this Agreement constitutes infringement, or misuse or misappropriation of any patent, copyright, trade secret, or any other proprietary or intellectual property right of any third party.

5.10.3 ~~To the extent required under applicable federal and state rules law, the Party providing access Qwest shall use its best efforts to obtain, from its vendors who have licensed intellectual property rights to such Party Qwest in connection with facilities and services provided hereunder, licenses under such intellectual property rights as necessary for the other Party CLEC to use such facilities and services as contemplated hereunder.~~

5.10.4 Except as expressly provided in this Intellectual Property Section, nothing in this Agreement shall be construed as the grant of a license, either express or implied, with respect to any patent, copyright, logo, trademark, trade name, trade secret or any other intellectual property right now or hereafter owned, controlled or licensable by either Party. Neither Party may use any patent, copyright, logo, trademark, trade name, trade secret or other intellectual property rights of the other Party or its affiliates without execution of a separate agreement

between the Parties.

5.10.5 Neither Party shall without the express written permission of the other Party, state or imply that: 1) it is connected, or in any way affiliated with the other or its affiliates; 2) it is part of a joint business association or any similar arrangement with the other or its affiliates; 3) the other Party and its affiliates are in any way sponsoring, endorsing or certifying it and its goods and services; or 4) with respect to its marketing, advertising or promotional activities or materials, the resold goods and services are in any way associated with or originated from the other or any of its affiliates. Nothing in this paragraph shall prevent either Party from truthfully describing the network elements it uses to provide service to its end users, provided it does not represent the network elements as originating from the other Party or its affiliates in any marketing, advertising or promotional activities or materials.

5.10.6 For purposes of resale only and notwithstanding the above, unless otherwise prohibited by Qwest pursuant to an applicable provision herein, CLEC may use the phrase "CLEC is a Reseller of Qwest's services" (the "Authorized Phrase") in CLEC's printed materials provided:

5.10.6.1 The Authorized Phrase is not used in connection with any goods or services other than Qwest services resold by CLEC.

5.10.6.2 CLEC's use of the Authorized Phrase does not cause end users to believe that CLEC is Qwest.

5.10.6.3 The Authorized Phrase, when displayed, appears only in text form (CLEC may not use the Qwest logo) with all letters being the same font and point size. The point size of the Authorized Phrase shall be no greater than one fourth the point size of the smallest use of CLEC's name and in no event shall exceed 8 point size.

5.10.6.4 CLEC shall provide all printed materials using the Authorized Phrase to Qwest for its prior written approval.

5.10.6.5 If Qwest determines that CLEC's use of the Authorized Phrase causes end user confusion, Qwest may immediately terminate CLEC's right to use the Authorized Phrase.

5.10.6.6 Upon termination of CLEC's right to use the Authorized Phrase or termination of this Agreement, all permission or right to use the Authorized Phrase shall immediately cease to exist and CLEC shall immediately cease any and all such use of the Authorized Phrase. CLEC shall either promptly return to Qwest or destroy all materials in its possession or control displaying the Authorized Phrase.

5.10.7 CLEC acknowledges the value of the mark "Qwest" Qwest and the goodwill associated therewith and acknowledges that such goodwill is a property right belonging to Qwest Communications International Inc. Qwest (the "Owner"). CLEC recognizes that nothing contained in this Agreement is intended as an assignment or grant to CLEC of any right, title or interest in or to the Mark and that this Agreement does not confer any right or license to grant sublicenses or permission to third parties to use the Mark and is not assignable. CLEC will do nothing inconsistent with the Owner's ownership of the Mark, and all rights, if any, that may be acquired by use of the Mark shall inure to the benefit of the Owner. CLEC will not adopt, use (other than as authorized herein), register or seek to register any mark anywhere in the world

which is identical or confusingly similar to the Mark or which is so similar thereto as to constitute a deceptive colorable imitation thereof or to suggest or imply some association, sponsorship, or endorsement by the Owner. The Owner makes no warranties regarding ownership of any rights in or the validity of the Mark.

5.10.8 For all intellectual property licensed by third parties to Qwest associated with the Unbundled Network Elements provided by Qwest under this Agreement, any time during the term of the Agreement, Qwest shall promptly disclose to CLEC in writing upon the reasonable request of the CLEC accompanied by a demonstrated need on the part of CLEC to obtain such information (i) the name of the Party owning, controlling or licensing such intellectual property, (ii) the facilities or equipment associated with such intellectual property, (iii) the nature of the intellectual property, and (iv) the relevant agreements or licenses governing Qwest's use of the intellectual property unless Qwest is prohibited by the terms of the agreement from disclosing the existence of the agreement. Within a reasonable period of time of a request by CLEC, Qwest shall provide copies of any relevant agreements or licenses governing Qwest's use of the intellectual property to CLEC. To the extent Qwest is prohibited by confidentiality or other provisions of an agreement or license from disclosing to CLEC any relevant agreement or license, Qwest shall immediately (i) disclose so much of it as is not prohibited, and (ii) exercise best efforts to cause the vendor, licensor or other beneficiary of the confidentiality provisions to agree to disclosure of the remaining portions under terms and conditions equivalent to those governing access by and disclosure to Qwest.

5.11 Warranties

5.11.1 NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE PARTIES AGREE THAT NEITHER PARTY HAS MADE, AND THAT THERE DOES NOT EXIST, ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND THAT ALL PRODUCTS AND SERVICES PROVIDED HEREUNDER ARE PROVIDED "AS IS," WITH ALL FAULTS.

5.12 Assignment

5.12.1 Neither Party may assign or transfer (whether by operation of law or otherwise) this Agreement (or any rights or obligations hereunder) to a third party without the prior written consent of the other Party. Notwithstanding the foregoing, either Party may assign or transfer this Agreement to a corporate affiliate or an entity under its common control; however, if CLEC's assignee or transferee has an Interconnection agreement with Qwest, no assignment or transfer of this Agreement shall be effective without the prior written consent of Qwest. Such consent shall include appropriate resolutions of conflicts and discrepancies between the assignee's or transferee's Interconnection agreement and this Agreement. Any attempted assignment or transfer that is not permitted is void *ab initio*. Without limiting the generality of the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties' respective successors and assigns.

5.12.2 Without limiting the generality of the foregoing subsection, any merger, dissolution, consolidation or other reorganization of CLEC, or any sale, transfer, pledge or other disposition by CLEC of securities representing more than fifty percent (50%) of the securities entitled to vote in an election of CLEC's board of directors or other similar governing body, or any sale, transfer, pledge or other disposition by CLEC of substantially all of its assets, shall be deemed a transfer of control. If any entity, other than CLEC, involved in such merger,

dissolution, consolidation, reorganization, sale, transfer, pledge or other disposition of CLEC has an Interconnection agreement with Qwest, the Parties agree that only one agreement, either this Agreement or the Interconnection agreement of the other entity, will remain valid. All other Interconnection agreements will be terminated. The Parties agree to work together to determine which Interconnection agreement should remain valid and which should terminate. In the event the Parties cannot reach agreement on this issue, the issue shall be resolved through the Dispute Resolution process contained in this Agreement.

5.12.3 Nothing in this section is intended to restrict the CLEC's rights to opt-into Interconnection Agreements under § 252(i) of the Act.

5.13 Default

5.13.1 If either Party defaults in the payment of any amount due hereunder, or if either Party violates any other material provision of this Agreement, and such default or violation shall continue for thirty (30) calendar days after written notice thereof, the other Party may seek relief in accordance with the Dispute Resolution provision of this Agreement. The failure of either Party to enforce any of the provisions of this Agreement or the waiver thereof in any instance shall not be construed as a general waiver or relinquishment on its part of any such provision, but the same shall, nevertheless, be and remain in full force and effect.

5.14 Disclaimer of Agency

5.14.1 Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, no Party undertakes to perform any obligation of the other Party whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

5.15 Severability

5.15.1 In the event that any one or more of the provisions contained herein shall for any reason be held to be unenforceable or invalid in any respect under law or regulation, the Parties will negotiate in good faith for replacement language as set forth herein. If any part of this Agreement is held to be invalid or unenforceable for any reason, such invalidity or unenforceability will affect only the portion of this Agreement which is invalid or unenforceable. In all other respects, this Agreement will stand as if such invalid or unenforceable provision had not been a part hereof, and the remainder of this Agreement shall remain in full force and effect.

5.16 Nondisclosure

5.16.1 All information, including but not limited to specifications, microfilm, photocopies, magnetic disks, magnetic tapes, drawings, sketches, models, samples, tools, technical information, data, employee records, maps, financial reports, and market data, (i) furnished by one Party to the other Party dealing with end user specific, facility specific, or usage specific information, other than end user information communicated for the purpose of providing directory assistance or publication of directory database, or (ii) in written, graphic,

electromagnetic, or other tangible form and marked at the time of delivery as "Confidential" or "Proprietary", or (iii) communicated and declared to the receiving Party at the time of delivery, or by written notice given to the receiving Party within ten (10) calendar days after delivery, to be "Confidential" or "Proprietary" (collectively referred to as "Proprietary Information"), shall remain the property of the disclosing Party. A Party who receives Proprietary Information via an oral communication may request written confirmation that the material is Proprietary Information. A Party who delivers Proprietary Information via an oral communication may request written confirmation that the Party receiving the information understands that the material is Proprietary Information.

5.16.2 Upon request by the disclosing Party, the receiving Party shall return all tangible copies of Proprietary Information, whether written, graphic or otherwise, except that the receiving Party may retain one copy for archival purposes.

5.16.3 Each Party shall keep all of the other Party's Proprietary Information confidential and shall use the other Party's Proprietary Information only in connection with this Agreement. Neither Party shall use the other Party's Proprietary Information for any other purpose except upon such terms and conditions as may be agreed upon between the Parties in writing.

5.16.4 Unless otherwise agreed, the obligations of confidentiality and non-use set forth in this Agreement do not apply to such Proprietary Information as:

- a) was at the time of receipt already known to the receiving Party free of any obligation to keep it confidential evidenced by written records prepared prior to delivery by the disclosing Party; or
- b) is or becomes publicly known through no wrongful act of the receiving Party; or
- c) is rightfully received from a third person having no direct or indirect secrecy or confidentiality obligation to the disclosing Party with respect to such information; or
- d) is independently developed by an employee, agent, or contractor of the receiving Party which individual is not involved in any manner with the provision of services pursuant to the Agreement and does not have any direct or indirect access to the Proprietary Information; or
- e) is disclosed to a third person by the disclosing Party without similar restrictions on such third person's rights; or
- f) is approved for release by written authorization of the disclosing Party; or
- g) is required to be made public by the receiving Party pursuant to applicable law or regulation provided that the receiving Party shall give sufficient notice of the requirement to the disclosing Party to enable the disclosing Party to seek protective orders.

5.16.5 Nothing herein is intended to prohibit a Party from supplying factual information about its network and Telecommunications Services on or connected to its network to regulatory agencies including the Federal Communications Commission and the Commission so long as any confidential obligation is protected. In addition, either Party shall have the right to disclose Proprietary Information to any mediator, arbitrator, state or federal regulatory body, the Department of Justice or any court in the conduct of any proceeding arising under or relating in

any way to this Agreement or the conduct of either Party in connection with this Agreement, including without limitation the approval of this Agreement, or in any proceedings concerning the provision of interLATA services by Qwest that are or may be required by the Act. The Parties agree to cooperate with each other in order to seek appropriate protection or treatment of such Proprietary Information pursuant to an appropriate protective order in any such proceeding.

5.16.6 Effective Date of this Section. Notwithstanding any other provision of this Agreement, the Proprietary Information provisions of this Agreement shall apply to all information furnished by either Party to the other in furtherance of the purpose of this Agreement, even if furnished before the Effective Date.

5.16.7 Each Party agrees that the disclosing Party could be irreparably injured by a breach of the confidentiality obligations of this Agreement by the receiving Party or its representatives and that the disclosing Party shall be entitled to seek equitable relief, including injunctive relief and specific performance, in the event of any breach of the confidentiality provisions of this Agreement. Such remedies shall not be deemed to be the exclusive remedies for a breach of the confidentiality provisions of this Agreement, but shall be in addition to all other remedies available at law or in equity.

5.16.8 Nothing herein should be construed as limiting either Party's rights with respect to its own Proprietary Information or its obligations with respect to the other Party's Proprietary Information under Section 222 of the Act.

5.17 Survival

5.17.1 Any liabilities or obligations of a Party for acts or omissions prior to the ~~completion of the two-year term~~ termination or expiration of this Agreement, and any obligation of a Party under the provisions regarding indemnification, Confidential or Proprietary Information, limitations of liability, and any other provisions of this Agreement which, by their terms, are contemplated to survive (or to be performed after) termination of this Agreement, shall survive cancellation or termination hereof.

5.18 Dispute Resolution

5.18.1 If any claim, controversy or dispute between the Parties, their agents, employees, officers, directors or affiliated agents should arise, and the Parties do not resolve it in the ordinary course of their dealings (the "Dispute"), then it shall be resolved in accordance with the dispute resolution process set forth in this Section. Each notice of default, unless cured within the applicable cure period, shall be resolved in accordance herewith.

5.18.2 At the written request of either Party, and prior to any other formal dispute resolution proceedings, each Party shall designate a vice-presidential level employee to review, meet, and negotiate, in good faith, to resolve the Dispute. The Parties intend that these negotiations be conducted by non-lawyer, business representatives, and the locations, format, frequency, duration, and conclusions of these discussions shall be at the discretion of the representatives. By mutual agreement, the representatives may use other procedures, such as mediation, to assist in these negotiations. The discussions and correspondence among the representatives for the purposes of these negotiations shall be treated as Confidential Information developed for purposes of settlement, and shall be exempt from discovery and production, and shall not be admissible in any subsequent arbitration or other proceedings without the concurrence of both of the Parties.

5.18.3 If the vice-presidential level representatives have not reached a resolution of the Dispute within thirty (30) calendar days after the matter is referred to them, then either Party may demand that the Dispute be settled by arbitration. Such an arbitration proceeding shall be conducted by a single arbitrator, knowledgeable about the telecommunications industry unless the Dispute involves amounts exceeding one million dollars (\$1,000,000) in which case the proceeding shall be conducted by a panel of three arbitrators, knowledgeable about the telecommunications industry. The arbitration proceedings shall be conducted under the then-current rules of the American Arbitration Association ("AAA"). Alternatively, by agreement of the Parties the arbitration may be conducted pursuant to J.A.M.A./Endispute procedural rules. -The Federal Arbitration Act, 9 U.S.C. Sections 1-16, not state law, shall govern the arbitrability of the Dispute. All expedited procedures prescribed by the AAA rules shall apply. The arbitrator's award shall be final and binding and may be entered in any court having jurisdiction thereof. Each Party shall bear its own costs and attorneys' fees, and shall share equally in the fees and expenses of the arbitrator. The arbitration proceedings shall occur in the Phoenix, Arizona metropolitan area or in another mutually agreeable location. It is acknowledged that the Parties, by mutual, written agreement, may change any of these arbitration practices for a particular, some, or all Dispute(s).

5.18.4 Should it become necessary to resort to court proceedings to enforce a Party's compliance with the dispute resolution process set forth herein, and the court directs or otherwise requires compliance herewith, then all of the costs and expenses, including its reasonable attorney fees, incurred by the Party requesting such enforcement shall be reimbursed by the non-complying Party to the requesting Party.

5.18.5 No Dispute, regardless of the form of action, arising out of this Agreement, may be brought by either Party more than two (2) years after the cause of action accrues.

5.18.6 Nothing in this Section is intended to divest or limit the jurisdiction and authority of the Commission or the FCC as provided by state and federal law.

5.19 Controlling Law

5.19.1 This Agreement is offered by Qwest and accepted by CLEC in accordance with ~~the terms of the Act~~ applicable federal law and the State law of Arizona. It shall be interpreted solely in accordance with applicable federal law ~~the terms of the Act~~ and the State law of Arizona.

5.20 Responsibility for Environmental Contamination

5.20.1 Neither Party shall be liable to the other for any costs whatsoever resulting from the presence or release of any environmental hazard that either Party did not introduce to the affected work location. Both Parties shall defend and hold harmless the other, its officers, directors and employees from and against any losses, damages, claims, demands, suits, liabilities, fines, penalties and expenses (including reasonable attorneys' fees) that arise out of or result from (i) any environmental hazard that the indemnifying Party, its contractors or agents introduce to the work locations or (ii) the presence or release of any environmental hazard for which the indemnifying Party is responsible under applicable law.

5.20.2 In the event any suspect materials within Qwest-owned, operated or leased facilities are identified to be asbestos containing, CLEC will ensure that to the extent any

activities which it undertakes in the facility disturb such suspect materials, such CLEC activities will be in accordance with applicable local, state and federal environmental and health and safety statutes and regulations. Except for abatement activities undertaken by CLEC or equipment placement activities that result in the generation of asbestos-containing material, CLEC does not have any responsibility for managing, nor is it the owner of, nor does it have any liability for, or in connection with, any asbestos-containing material. Qwest agrees to immediately notify CLEC if Qwest undertakes any asbestos control or asbestos abatement activities that potentially could affect CLEC personnel, equipment or operations, including, but not limited to, contamination of equipment.

5.21 Notices

5.21.1 Any notices required by or concerning this Agreement shall be in writing and shall be sufficiently given if delivered personally, delivered by prepaid overnight express service, or sent by certified mail, return receipt requested, to Qwest and CLEC at the addresses shown below:

Qwest Corporation

Director Interconnection Compliance

1801 California, Room 2410

Denver, CO 80202

With copy to:

Qwest Attention:

Corporate Counsel, Interconnection

1801 California Street, ~~51st~~ 49th Floor

Denver, CO 80202

and to CLEC at the address shown below:

Name:

If personal delivery is selected to give notice, a receipt acknowledging such delivery must be obtained. Each Party shall inform the other of any change in the above contact person and/or address using the method of notice called for in this Section 5.21.

5.22 Responsibility of Each Party

5.22.1 Each Party is an independent contractor, and has and hereby retains the right to exercise full control of and supervision over its own performance of its obligations under this Agreement and retains full control over the employment, direction, compensation and discharge of all employees assisting in the performance of such obligations. Each Party will be solely responsible for all matters relating to payment of such employees, including compliance with social security taxes, withholding taxes and all other regulations governing such matters. Each Party will be solely responsible for proper handling, storage, transport and disposal at its own expense of all (i) substances or materials that it or its contractors or agents bring to, create or assume control over at work locations, and (ii) waste resulting therefrom or otherwise generated in connection with its or its contractors' or agents' activities at the work locations. Subject to the limitations on liability and except as otherwise provided in this Agreement, each Party shall be responsible for (i) its own acts and performance of all obligations imposed by applicable law in connection with its activities, legal status and property, real or personal, and (ii) the acts of its own affiliates, employees, agents and contractors during the performance of that Party's obligations hereunder.

5.23 No Third Party Beneficiaries

5.23.1 The provisions of this Agreement are for the benefit of the Parties and not for any other Person. Unless specifically set forth herein, this Agreement does will not provide and shall not be construed to provide any Person not a Party to this Agreement third parties with any remedy, claim, liability, reimbursement, cause claim of action, or other privilegeright in excess of those existing by reference in this Agreement.

5.24 Referenced Documents

5.24.1 All references to Sections shall be deemed to be references to Sections of this Agreement unless the context shall otherwise require. Whenever any provision of this Agreement refers to a technical reference, technical publication, Qwest practice, any publication of telecommunications industry administrative or technical standards, or any other document specifically incorporated into this Agreement, it will be deemed to be a reference to the most recent version or edition (including any amendments, supplements, addenda, or successors) of such document that is in effect, and will include the most recent version or edition (including any amendments, supplements, addenda, or successors) of each document incorporated by reference in such a technical reference, technical publication, Qwest practice, or publication of industry standards. The existing configuration of either Party's network may not be in immediate compliance with the latest release of applicable referenced documents.

5.25 Publicity

5.25.1 Neither Party shall publish or use any publicity materials with respect to the execution and delivery or existence of this Agreement without the prior written approval of the other Party.

5.26 Executed in Counterparts

5.26.1 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original; but such counterparts shall together constitute one and the same instrument.

5.27 Compliance

5.27.1 Each Party shall comply with all applicable federal, state, and local laws, rules and regulations applicable to its performance under this Agreement. Without limiting the foregoing, Qwest and CLEC agree to keep and maintain in full force and effect all permits, licenses, certificates, and other authorities needed to perform their respective obligations hereunder.

5.28 Compliance with the Communications Assistance Law Enforcement Act of 1994

5.28.1 Each Party represents and warrants that any equipment, facilities or services provided to the other Party under this Agreement comply with the Communications Assistance Law Enforcement Act of 1994 ("CALEA"). Each Party shall indemnify and hold the other Party harmless from any and all penalties imposed upon the other Party for such noncompliance and shall at the non-compliant Party's sole cost and expense, modify or replace any equipment, facilities or services provided to the other Party under this Agreement to ensure that such equipment, facilities and services fully comply with CALEA.

5.29 Cooperation

5.29.1 The Parties agree that this Agreement involves the provision of Qwest services in ways such services were not previously available and the introduction of new processes and procedures to provide and bill such services. Accordingly, the Parties agree to work jointly and cooperatively in testing and implementing processes for pre-ordering, ordering, maintenance, provisioning and billing and in reasonably resolving issues which result from such implementation on a timely basis. Electronic processes and procedures are addressed in the Support Functions Section of this Agreement.

5.30 Amendments

5.30.1 When this document is being used as an Interconnection agreement, it can only be amended in writing, executed by the duly authorized representatives of the Parties.

5.31 Entire Agreement

5.31.1 This Agreement, including all Exhibits and subordinate documents attached to it or referenced within, all of which are hereby incorporated herein, constitutes the entire agreement between Qwest and CLEC and supersedes all prior oral or written agreements, representations, statements, negotiations, understandings, proposals and undertakings with respect to the subject matter hereof.

5.32 Pick and Choose

~~5.32.1 If this document is being used to negotiate an Interconnection Agreement, the Parties agree to comply with Section 252(i) of the Act, and rules promulgated thereunder.~~
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Section 11.0 - NETWORK SECURITY

11.1 Protection of Service and Property. Each Party shall exercise the same degree of care to prevent harm or damage to the other Party and any third parties, its employees, agents or end users, or their property as it employs to protect its own personnel, end users and property, etc.

11.2 Each Party is responsible to provide security and privacy of communications. This entails protecting the confidential nature of telecommunications transmissions between end users during technician work operations and at all times. Specifically, no employee, agent or representative shall monitor any circuits except as required to repair or provide service of any end user at any time. Nor shall an employee, agent or representative disclose the nature of overheard conversations, or who participated in such communications or even that such communication has taken place. Violation of such security may entail state and federal criminal penalties, as well as civil penalties. CLEC is responsible for covering its employees on such security requirements and penalties.

11.3 The Qwest telecommunications network is part of the national security network, and as such, is protected by federal law. Deliberate sabotage or disablement of any portion of the underlying equipment used to provide the network is a violation of federal statutes with severe penalties, especially in times of national emergency or state of war. CLEC is responsible for covering its employees on such security requirements and penalties.

11.4 Qwest and CLEC share responsibility for security and network protection for each Collocation arrangement. Each Party's employees, agents or representatives must secure its own portable test equipment, spares, etc. and shall not use the test equipment or spares of other parties. Use of such test equipment or spares without written permission constitutes theft and may be prosecuted. Exceptions are the use of Qwest ladders in the Wire Center, either rolling or track, which CLEC may use in the course of work operations. Qwest assumes no liability to CLEC, its agents, employees or representatives, if CLEC uses a Qwest ladder available in the Wire Center.

11.5 Each Party is responsible for the physical security of its employees, agents or representatives. Providing safety glasses, gloves, etc. must be done by the respective employing Party. Hazards handling and safety procedures relative to the telecommunications environment is the training responsibility of the employing Party. Proper use of tools, ladders, and test gear is the training responsibility of the employing Party.

11.6 In the event that one Party's employees, agents or representatives inadvertently damage or impair the equipment of the other Party, prompt notification will be given to the damaged Party by verbal notification between the Parties' technicians at the site or by telephone to each Party's 24 x 7 security numbers.

11.7 Each Party shall comply at all times with Qwest security and safety procedures and requirements.

11.8 Qwest will allow CLEC to inspect or observe spaces which house or contain CLEC equipment or equipment enclosures at any time and to furnish CLEC with all keys, entry codes, lock combinations, or other materials or information which may be needed to gain entry into any secured CLEC space, in a manner consistent with that used by Qwest.

11.9 Qwest will limit the keys used in its keying systems for enclosed collocated spaces which contain or house CLEC equipment or equipment enclosures to its employees and representatives to emergency access only. CLEC shall further have the right to change locks where deemed necessary for the protection and security of such spaces.

11.10 Keys may entail either metallic keys or combination electronic ID/key cards. It is solely the responsibility of CLEC to ensure keys are not shared with unauthorized personnel and recover keys and electronic ID/keys promptly from discharged personnel, such that office security is always maintained. Qwest has similar responsibility for its employees.

11.11 CLEC will train its employees, agents and vendors on Qwest security policies and guidelines.

11.12 When working on Qwest ICDF Frames or in Qwest equipment line-ups, CLEC employees, agents and vendors agree to adhere to Qwest quality and performance standards provided by Qwest and as specified in this Agreement.

11.13 CLEC shall report all material losses to Qwest Security. All security incidents are to be referred directly to local Qwest Security – 1-888-Qwest-SECURE. In cases of emergency, CLEC shall call 911 and 1-888-Qwest-SECURE.

11.14 CLEC employees, agents and vendors will display the identification/access card above the waist and visible at all times.

11.15 CLEC employees will ensure adherence by its employees, agents and vendors to all Qwest environmental health and safety regulations. This includes all fire/life safety matters, OSHA, EPA, Federal, State and local regulations, including evacuation plans and indoor air quality.

11.16 CLEC employees, agents and vendors will secure and lock all doors and gates.

11.17 CLEC will report to Qwest all property and equipment losses immediately, any lost cards or keys, vandalism, unsecured conditions, security violations, anyone who is unauthorized to be in the work area or is not wearing the Qwest identification/access card.

11.18 CLEC's employees, agents and vendors will comply with Qwest Central Office fire and safety regulations, which include but are not limited to, wearing safety glasses in designated areas, keeping doors and aisles free and clean of trip hazards such as wire, checking ladders before moving, not leaving test equipment or tools on rolling ladders, not blocking doors open, providing safety straps and cones in installation areas, using electrostatic discharge protection, and exercising good housekeeping.

11.19 Smoking is not allowed in Qwest buildings, Wire Centers, and all other Qwest facilities. No open flames shall be permitted anywhere within the buildings. Failure to abide by this restriction will result in immediate denial of access for that individual and will constitute a violation of the access rules, subjecting CLEC to denial of unescorted access.

11.20 No flammable or explosive fluids or materials are to be kept or used anywhere within the Qwest buildings or on the grounds.

11.21 No weapons of any type are allowed on Qwest Premises. Vehicles on Qwest property are subject to this restriction as well.

11.22 CLEC's employees, agents or vendors may not make any modifications, alterations, additions or repairs to any space within the building or on the grounds.

11.23 Qwest employees may request CLEC's employee, agent or vendor to stop any work activity that in their reasonable judgment is a jeopardy to personal safety or poses a potential for damage to the building, equipment of services within the facility.

11.24 Qwest is not liable for any damage, theft or personal injury resulting from CLEC's employees, agents or vendors parking in a Qwest parking area.

11.25 CLEC's employees, agents or vendors outside the designated CLEC access area or without proper identification will be asked to vacate the Premises and Qwest Security will be notified. Continued violations may result in termination of access privileges.

11.26 Building related problems may be referred to the Qwest Work Environment Centers:

800-879-3499 (CO, WY, AZ, NM)
800-201-7033 (all other Qwest states)

11.27 CLEC will submit a Qwest Collocation Access Application form for individuals needing to access Qwest facilities. CLEC and Qwest will meet to review applications and security requirements.

11.28 CLEC employees, agents and vendors will utilize only corridors, stairways and elevators that provide direct access to CLEC's space or the nearest restroom facility. Such access will be covered in orientation meetings. Access shall not be permitted to any other portions of the building.

11.29 CLEC will collect identification/access cards for any employees, agents or vendors no longer working on behalf of CLEC and forward them to Qwest Security. If cards or keys cannot be collected, CLEC will immediately notify Qwest at 800-210-8169.

11.30 CLEC will assist Qwest in validation and verification of identification of its employees, agents and vendors by providing a telephone contact available 7 days a week, 24 hours a day.

11.31 CLEC employees, agents and vendors will notify Qwest Service Assurance (800-713-3666) when gaining access into a Central Office after hours. Normal business hours are 7:00 a.m. to 5:00 p.m.

11.32 CLEC will notify Qwest if CLEC has information that its employee, agent or vendor poses a safety and/or security risk. Qwest may deny access to anyone who in the reasonable judgment of Qwest threatens the safety or security of facilities or personnel.

11.33 CLEC will supply to Qwest Security, and keep up to date, a list of its employees, agents and vendors who require access to CLEC's space. The list will include names and social security numbers. Names of employees, agents or vendors to be added to the list will be

provided to Qwest Security, who will provide it to the appropriate Qwest personnel.

11.34 Revenue Protection. Qwest shall make available to CLEC all present and future fraud prevention or revenue protection features. These features include, but are not limited to, screening codes, 900 and 976 numbers. Qwest shall additionally provide partitioned access to fraud prevention, detection and control functionality within pertinent Operations Support Systems which include but are not limited to LIDB Fraud monitoring systems.

11.35 Law Enforcement Interface. Qwest provides emergency assistance to 911 centers and law enforcement agencies seven days a week/twenty-four hours a day. Assistance includes, but is not limited to, release of 911 trace and subscriber information; in-progress trace requests; establishing emergency trace equipment, release of information from an emergency trap/trace or *57 trace; requests for emergency subscriber information; assistance to law enforcement agencies in hostage/barricade situations, kidnappings, bomb threats, extortion/scams, runaways and life threats.

11.36 Qwest provides trap/trace, pen register and Title III assistance directly to law enforcement, if such assistance is directed by a court order. This service is provided during normal business hours, Monday through Friday. Exceptions are addressed in the above paragraph. The charges for these services will be billed directly to the law enforcement agency, without involvement of CLEC, for any lines served from Qwest Wire Centers or cross boxes.

11.37 In all cases involving telephone lines served from Qwest Wire Centers or cross boxes, whether the line is a resold line or part of an Unbundled Local Switching or Unbundled Loop element, Qwest will perform trap/trace Title III and pen register assistance directly with law enforcement. CLEC will not be involved or notified of such actions, due to non-disclosure court order considerations, as well as timely response duties when law enforcement agencies are involved. Exceptions to the above will be those cases, as yet undetermined, where CLEC must participate due to technical reasons wherein its circuitry must be accessed or modified to comply with law enforcement, or for legal reasons that may evolve over time. CLEC will provide Qwest with a 24 hour a day, 7 days a week contact for processing such requests, should they occur.

Section 12.0 - ACCESS TO OPERATIONAL SUPPORT SYSTEMS (OSS)

12.1 Description

12.1.1 Qwest has developed and shall continue to provide Operational Support Systems (OSS) interfaces using electronic gateways. These gateways act as a mediation or control point between CLEC's and Qwest's OSS. These gateways provide security for the interfaces, protecting the integrity of the Qwest OSS and databases. Qwest's OSS interfaces have been developed to support Pre-ordering, Ordering and Provisioning, Maintenance and Repair and Billing. This section describes the interfaces that Qwest has developed and shall provide to CLEC. Additional technical information and details shall be provided by Qwest in training sessions and documentation, such as the "Interconnect Mediated Access User's Guide." Qwest will continue to make improvements to the electronic interfaces as technology evolves, providing notification to CLEC consistent with the provisions of this Section.

12.1.2 Through its electronic gateways, Qwest shall provide CLEC non-discriminatory access to Qwest's OSS for Pre-ordering, Ordering and Provisioning, Maintenance and Repair, and Billing for resale and Unbundled Network Elements. For those functions with a retail analogue, such as pre-ordering and ordering and provisioning of resold services, Qwest shall provide CLEC access to its OSS in substantially the same time and manner as it provides to itself. For those functions with no retail analogue, such as pre-ordering and ordering and provisioning of unbundled elements, Qwest shall provide CLEC access to Qwest's OSS sufficient to allow an efficient competitor a meaningful opportunity to compete. Qwest shall deploy the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions. Qwest shall provide assistance for CLEC to understand how to implement and use all of the available OSS functions. Qwest shall provide CLEC sufficient electronic and manual interfaces to allow CLEC equivalent access to all of the necessary OSS functions. Qwest shall disclose to CLEC any internal business rules and other formatting information necessary to ensure that CLEC's requests and orders are processed efficiently. Qwest shall provide OSS designed to accommodate both current demand and reasonably foreseeable demand.

12.2 OSS Support for Pre-Ordering, Ordering and Provisioning

12.2.1 Local Service Request (LSR) Ordering Process

12.2.1.1 Qwest shall provide electronic interface gateways for submission of LSRs, including both an Electronic Data Interchange (EDI) interface and a Graphical User Interface (GUI).

12.2.1.2 The interface standards for EDI are based upon the Order & Billing Forum (OBF) Local Service Order Guidelines (LSOG), the Telecommunication Industry Forum (TCIF) Customer Service Guidelines; and the American National Standards Institute/Accredited Standards Committee (ANSI ASC) X12 protocols. Exceptions to the above standards shall be specified in the EDI disclosure documents.

12.2.1.3 The GUI shall provide a single interface for Pre-Order and Order transactions from CLEC to Qwest and is browser based. The GUI interface shall be based on the LSOG and utilizes a WEB standard technology, Hyper Text Markup Language (HTML), JAVA and the Transmission Control Protocol/Internet Protocol (TCP/IP) to transmit messages.

~~12.2.1.4~~~~12.2.1.4.1~~~~12.2.1.4.2~~~~12.2.1.5~~ Dial-Up Capabilities

~~12.2.1.5.1~~ Reserved for Future Use

~~12.2.1.5.2~~ Reserved for Future Use 12.2.1.4 Reserved for Future Use

12.2.1.5 Dial-Up Capabilities

12.2.1.5.1 Reserved for Future Use.

12.2.1.5.2 Reserved for Future Use.

12.2.1.5.3 When CLEC requests from Qwest more than fifty (50) SecurIDs, CLEC shall use a T1 line instead of dial-up capabilities.

12.2.1.6 Access Service Request (ASR) Ordering Process

12.2.1.6.1 Qwest shall provide a computer-to-computer batch file interface for submission of ASRs based upon the OBF Access Service Order Guidelines (ASOG).

12.2.1.7 Facility Based EDI Listing Process

Qwest shall provide a Facility Based EDI Listing interface to enable CLEC listing data to be translated and passed into the Qwest listing database.. This interface is based upon OBF LSOG and ANSI ASC X12 standards.

12.2.2 Maintenance and Repair

12.2.2.1 Qwest shall provide electronic interface gateways for reporting trouble, including an electronic bonding interface and a GUI interface, to facilitate the exchange of updated information and progress reports between Qwest and CLEC while the Trouble Report (TR) is open and a Qwest technician is working on the resolution.

~~12.2.2.2~~ Reserved for Future Use

~~12.2.2.3~~ Reserved for Future Use

~~12.2.2.4~~ Reserved for Future Use

~~12.2.2.5~~ Reserved for Future Use

12.2.3 Interface Availability

12.2.3.1 Qwest shall make the interfaces available during the hours listed in the Gateway Availability PIDs in Section 20.

12.2.3.2 Qwest shall notify CLECs regarding system downtime through mass email distribution and pop-up windows in the IMA GUI.

~~12.2.3.3~~ Reserved for Future Use

12.2.4 Billing

12.2.4 Billing

12.2.4.1 For products billed out of the Qwest Interexchange Access Billing System (IABS), Qwest will utilize the existing CABS/BOS format and technology for the transmission of bills.

12.2.4.2 For products billed out of the Qwest Customer Record Information System (CRIS), Qwest will utilize the existing EDI standard for the transmission of monthly local billing information. EDI is an established standard under the auspices of the ANSI/ASC X12 Committee. A proper subset of this specification has been adopted by the Telecommunications Industry Forum (TCIF) as the "811 Guidelines" specifically for the purposes of telecommunications billing.

12.2.5 Outputs

Output information will be provided to CLEC in the form of bills, files, and reports. Bills will capture all regular monthly and incremental/usage charges and present them in a summarized format. The files and reports delivered to CLEC come in the following categories:

Usage Record File	Line Usage Information
Loss and Completion	Order Information
Category 11	Facility Based Line Usage Information
SAG/FAM	Street Address/Facility Availability Information

12.2.5.1 Bills

12.2.5.1.1 CRIS Summary Bill - The CRIS Summary Bill represents a monthly summary of charges for most wholesale products sold by Qwest. This bill includes a total of all charges by entity plus a summary of current charges and adjustments on each sub-account. Individual sub-accounts are provided as billing detail and contain monthly, one-time charges and incremental/call detail information. The Summary Bill provides one bill and one payment document for CLEC. These bills are segmented by state and bill cycle. The number of bills received by CLEC is dictated by the product ordered and the Qwest region in which CLEC is operating.

12.2.5.1.2 IABS Bill - The IABS Bill represents a monthly summary of charges. This bill includes monthly and one-time charges plus a summary of any usage charges. These bills are segmented by product, LATA, billing account number (BAN) and bill cycle.

12.2.5.2 Files and Reports

12.2.5.2.1 Daily Usage Record File provides the accumulated set of call information for a given day as captured or recorded by the network switches. This file will be transmitted Monday through Friday, excluding Qwest holidays. This information is a file of unrated Qwest originated usage messages and rated CLEC originated usage messages. It is provided in Alliance for Telecommunication Industry Solution (ATIS) standard (Electronic Message

Interface) EMI format. This EMI format is outlined in the document SR-320; which can be obtained directly from ATIS. The Daily Usage Record File contains multi-state data for the Data Processing Center generating this information. Individual state identification information is contained with the message detail. Qwest will provide this data to CLEC with the same level of precision and accuracy it provides itself. This file will be provided for the following list of products:

- a) Resale; and
- b) Unbundled Switch Port.

12.2.5.2.2 The charge for this Daily Usage Record File is contained in Exhibit A of this Agreement.

12.2.5.2.3 Routing of in-region IntraLATA Collect, Calling Card, and Third Number Billed Messages - Qwest will distribute in-region intraLATA collect, calling card, and third number billed messages to CLEC and exchange with other CLECs operating in region in a manner consistent with existing inter-company processing agreements. Whenever the daily usage information is transmitted to a carrier, it will contain these records for these types of calls as well.

12.2.5.2.4 Loss Report provides CLEC with a daily report that contains a list of accounts that have had lines and/or services disconnected. This may indicate that the end user has changed CLECs or removed services from an existing account. This report also details the order number, service name and address, and date this change was made. Individual reports will be provided for the following list of products:

- a) Interim Number Portability;
- b) Resale;
- c) Unbundled Loop; and
- d) Unbundled Line-side Switch Port.

12.2.5.2.5 Completion Report provides CLEC with a daily report. This report is used to advise CLEC that the order(s) for the service(s) requested is complete. It details the order number, service name and address and date this change was completed. Individual reports will be provided for the following list of products:

- a) Interim Number Portability;
- b) Resale;
- c) Unbundled Loop; and
- d) Unbundled Line-side Switch.

12.2.5.2.6 Category 11 Records are Exchange Message Records (EMR) which provide mechanized record formats that can be used to exchange access usage information between Qwest and CLEC. Category 1101 series records are used to exchange detailed access usage information.

12.2.5.2.7 Category 1150 series records are used to exchange summarized Meet Point Billed access minutes-of-use.

The transmission method/media types available for these mechanized records are available the ~~Interconnect and Resale Resource Guide~~ PCAT located at http://www.uswest.com/carrier/guides/resource_guides.html.

12.2.5.2.8 SAG/FAM Files. The SAG (Street Address Guide)/ FAM (Features Availability Matrix) files contain the following information:

a) SAG provides ~~Address and Serving Central Office~~ information address and serving central office information.

b) FAM provides USOCs and descriptions by state (POTS services only), and USOC availability by NPA-NXX with the exception of Centrex. InterLATA/IntraLATA carriers by NPA-NXX.

These files are made available via a download process. They can be retrieved by ftp (file transfer protocol), NDM connectivity, or a Web browser.

12.2.6 Change Management

Qwest and CLEC shall participate in discussions of OSS development in the Qwest Co-Provider Industry Change Management Process (~~"CICMP"~~, CICMP), as set forth in Exhibit G. The CICMP shall: (i) provide a forum for CLEC and Qwest to discuss change requests (CR), release notifications (RN), systems release life cycles, and communications; (ii) provide a forum for CLECs as an industry to discuss and prioritize their CRs; (iii) develop a mechanism to track and monitor CLEC CRs and Qwest RNs; and (iv) establish communication intervals where appropriate in the process. After following the process set forth in Exhibit G, CLEC and Qwest may escalate issues pursuant to the CICMP escalation process set forth in Exhibit H. Escalations subject to the process of Exhibit H include issues related to the CICMP process itself, including the processes set forth in Exhibit G. Qwest will inform CLECs through the CICMP of all planned changes to Qwest software, local interconnection products, business processes and ~~Technical Publications~~, technical publications, including additions, deletions, or changes which affect any document or information CLEC receives from Qwest or any document or information Qwest sends CLEC to allow CLEC to transact business. Qwest will seek CLEC input on the planned changes and will report such consideration in a timely manner.

12.2.6.1 In the course of establishing operational ready system interfaces between Qwest and CLEC to support local service delivery, CLEC and Qwest may need to define and implement system interface specifications that are supplemental to existing standards. CLEC and Qwest will submit such specifications to the appropriate standards committee and will work towards their acceptance as standards.

12.2.6.2 Release updates will be based on regulatory obligations as dictated by the FCC or Commissions and, as time permits, the agreed upon changes requested by

the CLEC Industry Change Management Process (CICMP). Qwest will provide to CLEC the features list for modifications to the interface. Specifications for interface modifications will be provided to CLEC three weeks prior to the release date.

12.2.7 CLEC Responsibilities for Implementation of OSS Interfaces

12.2.7.1 Before any CLEC implementation can begin, CLEC must completely and accurately answer the CLEC Questionnaire.

12.2.7.2 Once Qwest receives a complete and accurate New Customer Questionnaire, Qwest and CLEC will mutually agree upon time frames for implementation.

12.2.8 Qwest Responsibilities for On-going Support for OSS Interfaces

Qwest will support previous EDI releases for six (6) months after the next subsequent EDI release has been deployed.

12.2.8.1 Qwest will provide written notice to CLEC of the need to migrate to a new release.

12.2.8.2 Qwest will provide an EDI Implementation Coordinator to work with CLEC for business scenario re-certification, migration and data conversion strategy definition.

12.2.8.3 Re-certification is the process by which CLECs demonstrate the ability to generate correct transactions for the new release. Qwest will provide the suite of tests for re-certification to CLEC with the issuance of the disclosure document.

12.2.8.4 Reserved for Future Use.

12.2.9 CLEC Responsibilities for On-going Support for OSS Interfaces

12.2.9.1 If using the GUI interface, CLEC must work with Qwest to train CLEC personnel on the GUI functions that CLEC will be using. Qwest and CLEC shall concur on which GUI functions should be included in CLEC's training. Qwest and CLEC shall make reasonable efforts to schedule training in a timely fashion.

12.2.9.2 An exchange protocol will be used to transport EDI formatted content. CLEC must perform certification testing of exchange protocol prior to using the EDI interface.

12.2.9.3 Qwest will provide CLEC with access to a stable testing environment to certify that its OSS will be capable of interacting smoothly and efficiently with Qwest's OSS. Qwest has established the following test processes to assure the implementation of a solid interface between Qwest and CLEC:

12.2.9.3.1 Connectivity Testing – CLEC and Qwest will conduct connectivity testing calls. This test will establish the ability of the trading partners to send and receive EDI data effectively. This test verifies the communications between the

trading partners. Connectivity is established during each phase of the implementation cycle. This test is also conducted prior to Certification Testing controlled production and before going live in the production environment if CLEC has implemented environment changes when moving into production.

12.2.9.3.2 Stand-Alone Testing Environment – Qwest is developing a stand-alone testing environment to take pre-order and order requests, pass them to the stand-alone database, and return responses to CLEC during its development of EDI. The Stand-Alone Testing Environment provides CLEC the opportunity to validate its technical development efforts. This testing verifies CLEC's ability to ~~sentsend~~ correctly formatted EDI transactions through the EDI/IMA system edits successfully. Stand Alone Testing uses test account data. All stand alone test orders are subjected to the same edits as production orders. This testing phase is optional.

12.2.9.3.3 Interoperability Testing – CLEC has the option of participating with Qwest in interoperability testing to provide CLEC with the opportunity to validate technical development efforts and to quantify processing results. Interoperability testing verifies CLEC's ability to send correct EDI transactions through the EDI/IMA system edits successfully. Interoperability testing requires the use of valid Qwest data. All interoperability orders are subjected to the same edits as production orders. This testing phase is optional when CLEC has conducted Stand-Alone Testing successfully.

12.2.9.3.4 Controlled Production – Qwest and CLEC will perform controlled production. The controlled production process is designed to validate the ability of CLEC to transmit EDI data that completely meets X12 standards definitions and complies with all Qwest business rules. Controlled production consists of the controlled submission of actual CLEC production requests to the Qwest production environment. Qwest treats these orders as production orders. Qwest and CLEC use controlled production results to determine operational readiness. Controlled production requires the use of valid account and order data. All certification orders are considered to be live orders and will be provisioned.

12.2.9.3.5 If CLEC is using EDI, Qwest shall provide CLEC with a pre-allotted amount of time to complete certification of its business scenarios. It is the sole responsibility of CLEC to schedule an appointment with Qwest for certification of its business scenarios. CLEC must comply with the agreed upon dates and times scheduled for the certification of its business scenarios. If the certification of business scenarios is delayed due to CLEC, it is the sole responsibility of CLEC to schedule new appointments for certification of its business scenarios. Conflicts in the schedule could result in certification being delayed. If a delay is due to Qwest, Qwest will honor CLEC's schedule through the use of alternative hours.

12.2.9.4 ———If CLEC is using the IMA EDI interface, CLEC must work with Qwest to certify the business scenarios that CLEC will be using in order to ensure successful transaction processing. Qwest and CLEC shall mutually agree to the business scenarios for which CLEC ~~requires certification is required to be certified.~~ Certification is granted only for a specific release of the ~~IMA EDI interface. EDI.~~

12.2.9.4.1 For new a new software release or upgrade, Qwest will provide CLEC a testing environment that mirrors the production environment in order for CLEC to test the new release. For software releases and upgrades, Qwest has implemented the testing processes set forth in Section 12.2.9.3.2, 12.2.9.3.3 and 12.2.9.3.4.

12.2.9.4.2 For a new software release or upgrade, Qwest will provide CLEC the stand alone testing environment, as set forth in Section 12.2.9.3.2, prior to implementing that release or upgrade in the production environment.

12.2.9.5 New releases of the EDI interface may require re-certification of some or all business scenarios. A determination as to the need for re-certification will be made by the Qwest coordinator in conjunction with the release manager of each IMA EDI release. Notice of the need for re-certification will be provided to CLEC as the new release is implemented. The suite of re-certification test scenarios will be provided to CLEC with the disclosure document.

12.2.9.6 CLEC will contact the Qwest EDI Implementation Coordinator to initiate the migration process. CLEC must complete the re-certification and migration to the new EDI release within six (6) months of the deployment of the new release.

12.2.9.7 CLEC will be expected to execute the re-certification test cases in the interoperability test environment. CLEC will provide Purchase Order Numbers (PONs) of the successful test cases to Qwest.

12.2.9.8 Reserved for ~~future use.~~ Future Use

12.2.9.9 In the event of electronic interface trouble, CLEC shall use its best efforts to isolate and resolve the trouble using the guidelines. If CLEC cannot resolve the problem, then CLEC should contact the CLEC Systems Help Desk. The CLEC Systems Help Desk is CLEC's Single Point of Contact for electronic interface trouble.

12.2.10 CLEC Support

12.2.10.1 Qwest shall provide assistance for CLEC to understand how to implement and use all of the available OSS functions. Qwest shall disclose to CLEC any internal business rules and other formatting information necessary to ensure that CLEC's requests and orders are processed efficiently. This assistance will include training, documentation, and CLEC Help Desk.

~~12.2.10.2 Reserved for Future Use.~~

~~12.2.10.3 Reserved for Future use.~~

12.2.11 Compensation/Cost Recovery

On-going and one-time startup charges, as applicable, will be billed at rates set forth in Exhibit A.-

12.3 Maintenance and Repair

12.3.1 Service Levels

12.3.1.1 Qwest will provide repair and maintenance for all services covered by this Agreement in a manner in substantially the same time and manner as that which Qwest provides for itself.

12.3.1.2 During the term of this Agreement, Qwest will provide necessary maintenance business process support to allow CLEC to provide similar service quality to that provided by Qwest to its end users.

12.3.1.3 Qwest will perform repair service that is substantially the same in timeliness and quality to that which it provides to its own end users.

12.3.2 Branding

12.3.2.1 Should Qwest need to use various forms for communication with CLEC end users (while out on premises dispatches on behalf of CLEC, for example), Qwest will use unbranded forms.

12.3.2.2 If required by CLEC, Qwest will use branded forms at CLEC's full expense, covering training costs, storage, printing, distribution and all other branding-related costs.

12.3.3 Service interruptions

12.3.3.1 The characteristics and methods of operation of any circuits, facilities or equipment of either Party connected with the services, facilities or equipment of the other Party pursuant to this Agreement shall not: 1) interfere with or impair service over any facilities of the other Party, its affiliated companies, or its connecting and concurring carriers involved in its services; 2) cause damage to the plant of the other Party, its affiliated companies, or its connecting concurring carriers involved in its services; 3) violate any applicable law or regulation regarding the invasion of privacy of any communications carried over the Party's facilities; or 4) create hazards to the employees of either Party or to the public. Each of these requirements is hereinafter referred to as an "Impairment of Service".

12.3.3.2 If it is confirmed that either Party is causing an Impairment of Service, as set forth in this Section, the Party whose network or service is being impaired (the "Impaired Party") shall promptly notify the Party causing the Impairment of Service (the "Impairing Party") of the nature and location of the problem. The Impaired Party shall advise the Impairing Party that, unless promptly rectified, a temporary discontinuance of the use of any circuit, facility or equipment may be required. The Impairing Party and the Impaired Party agree to work together to attempt to promptly resolve the Impairment of Service. If the Impairing Party is unable to promptly remedy the Impairment of Service, the Impaired Party may temporarily discontinue use of the affected circuit, facility or equipment.

12.3.3.3 To facilitate trouble reporting and to coordinate the repair of the service provided by each Party to the other under this Agreement, each Party shall designate a repair center for such service.

12.3.3.4 Each Party shall furnish a trouble reporting telephone number for the designated repair center. This number shall give access to the location where records are normally located and where current status reports on any trouble reports are readily available. If necessary, alternative out-of-hours procedures shall be established to ensure access to a location that is staffed and has the authority to initiate corrective action.

12.3.3.5 Before either Party reports a trouble condition, it shall use its best efforts to isolate the trouble to the other's facilities.

12.3.3.5.1 In cases where a trouble condition affects a significant portion of the other's service, the Parties shall assign the same priority provided to other interconnecting CLECs and itself.

12.3.3.5.2 The Parties shall cooperate in isolating trouble conditions.

12.3.4 Trouble Isolation

12.3.4.1 Pursuant to the applicable ~~Exchange and Network Service Catalog, exchange and network service catalog~~, Qwest will bill appropriate charges, Maintenance of Service Charges, set forth in Exhibit A, for dispatched work done by Qwest where the trouble is found to be on the end user's side of the NID or trouble is found to be in CLEC's portion of the network.

12.3.4.2 ~~Other, Maintenance of Service~~, set forth in Exhibit A, may be imposed by Qwest on CLEC for other internal repair work incurred on behalf of CLEC and later found to be in CLEC network components.

12.3.5 Inside Wire Maintenance

Except where specifically required by state or federal regulatory mandates, Qwest will not perform any maintenance of inside wire (premises wiring beyond the end user's demarcation point) for CLEC or its end users.

12.3.6 Testing/Test Requests/Coordinated Testing/UNEs

12.3.6.1 Qwest shall have no obligation to test an end user's line or circuit, but may in appropriate circumstances.

12.3.6.2 Prior to any test being conducted on a line, Qwest must receive a trouble report from CLEC.

12.3.6.3 Qwest end users are not given test results. On ~~manually-reported~~ manually reported trouble, Qwest will not provide to CLEC the test results for its trouble reports. For ~~electronically-reported~~ electronically reported trouble, CLEC may be provided various basic test results.

12.3.6.4 Qwest's test systems do not support testing of Unbundled Network Elements. CLEC shall isolate the trouble condition on UNE end users to Qwest's portion of the end user's service before Qwest accepts a trouble report for that end user.

12.3.7 ~~Workcenter~~Work Center Interfaces

12.3.7.1 Qwest and CLEC shall work cooperatively to develop positive, close working relationships among corresponding work_centers involved in the trouble resolution processes.

12.3.8 Misdirected Repair Calls

12.3.8.1 CLEC and Qwest will employ the following procedures for handling misdirected repair calls:

12.3.8.1.1 CLEC and Qwest will provide their respective end users with the correct telephone numbers to call for access to their respective repair bureaus.

12.3.8.1.2 End users of CLEC shall be instructed to report all cases of trouble to CLEC. End users of Qwest shall be instructed to report all cases of trouble to Qwest.

12.3.8.1.3 To the extent the correct provider can be determined, misdirected repair calls will be referred to the proper provider of Basic Exchange Telecommunications Service; however, nothing in this Agreement shall be deemed to prohibit Qwest or CLEC from discussing its products and services with CLEC's or Qwest's end users who call the other Party.

12.3.8.1.4 CLEC and Qwest will provide their respective repair contact numbers to one another on a reciprocal basis.

12.3.8.1.5 In responding to repair calls, neither Party shall make disparaging remarks about each other.

12.3.9 Major Outages/Restoral/Notification

12.3.9.1 Qwest will notify CLEC of major network outages as soon as is practical. This notification will be via e-mail to CLEC's identified contact. With the minor exception of certain proprietary information, Qwest will utilize the same thresholds and processes for external notification as it does for internal purposes. This major outage information will be sent via e-mail on the same frequency schedule as is provided internally within Qwest. Service restoration will be non-discriminatory, and will be accomplished as quickly as possible according to Qwest and/or industry standards.

12.3.9.2 Qwest will meet with associated personnel from CLEC to share contact information and review Qwest's outage restoral processes and notification processes.

12.3.9.3 Qwest's emergency restoration process operates on a 7X24 basis.

12.3.10 Protective Maintenance

12.3.10.1 Qwest will perform scheduled maintenance of substantially the same quality to that which it provides to itself.

12.3.10.2 Qwest will work cooperatively with CLEC to develop industry-wide processes to provide as much notice as possible to CLEC of pending maintenance activity. Such process work will include establishment of reasonable thresholds and notification standards.

12.3.11 Hours of Coverage

12.3.11.1 Qwest's repair operation is seven days a week, 24 hours a day. Not all functions or locations are covered with scheduled employees on a 7X24 basis. Where such 7X24 coverage is not available, Qwest's repair operations center (always available 7X24) can call-out technicians or other personnel required for the situation.

12.3.12 Escalations

12.3.12.1 Qwest will provide trouble escalation procedures to CLEC. Such procedures will be based on the processes Qwest employs for its own end users. Qwest escalations are manual processes.

12.3.12.2 Qwest repair escalations begin with calls to the up-front trouble reporting centers.

12.3.13 Dispatch

12.3.13.1 Qwest will provide maintenance dispatch personnel on the same schedule as it provides for its own end users.

12.3.13.2 Upon the receipt of a trouble report from CLEC, Qwest will do all that is reasonable and practical, according to internal and industry standards, to resolve the repair condition. Qwest will dispatch repair personnel on occasion to repair the condition. It will be Qwest's decision whether or not to send a technician out on a dispatch. Qwest reserves the right to make this dispatch decision based on the best information available to it in the trouble resolution process. It is not always necessary to dispatch to resolve trouble; should CLEC require a dispatch when Qwest believes the dispatch is not necessary, appropriate charges will be billed by Qwest to CLEC for those dispatch-related costs in accordance with Exhibit A.

12.3.13.3 For POTS lines, Qwest will not request authorization from CLEC prior to dispatch. For lines supported by Qwest's designed services process, Qwest may accept CLEC authorization to dispatch. Qwest's operational processes are regularly reviewed and may be altered in the future. Should processes be changed, CLEC will be notified.

12.3.13.4 CLEC shall perform appropriate trouble isolation and screening prior to submitting a trouble report to Qwest.

12.3.14 Electronic Reporting

12.3.14.1 CLEC may submit Trouble Reports through the electronic bonding or GUI interfaces provided by Qwest.

12.3.15 Intervals/Parity

12.3.15.1 Similar trouble conditions, whether reported on behalf of Qwest end users or on behalf of CLEC end users, will receive similar commitment intervals.

12.3.16 Jeopardy Management

12.3.16.1 Notification to CLEC will be given on the same basis that a trouble report interval is likely to be missed.

12.3.17 Trouble Screening

12.3.17.1 CLEC shall screen and test its end user trouble reports completely enough to insure that it sends to Qwest only trouble reports that involve Qwest facilities.

12.3.17.2 Qwest will cooperate with CLEC to show CLEC how Qwest screens trouble conditions in its own centers, so that CLEC will employ similar techniques in its centers.

12.3.18 Maintenance Standards

12.3.18.1 Qwest will cooperate with CLEC to meet the maintenance standards outlined in this Agreement.

12.3.18.2 On ~~manually reported~~ manually reported trouble, Qwest will inform CLEC of repair completion as soon as is practical after its completion. On electronically reported trouble reports the electronic system will automatically update status information, including trouble completion, across the joint electronic gateway.

12.3.19 End User Interfaces

12.3.19.1 CLEC will be responsible for all interactions with its end users including service call handling and notifying its end users of trouble status and resolution.

12.3.19.2 All Qwest employees who perform repair service for CLEC end users will be trained in non-discriminatory behavior.

12.3.20 Repair Call Handling

12.3.20.1 ~~Manually reported~~ Manually reported repair calls by CLEC to Qwest will be answered with substantially the same quality and speed as Qwest answers calls from its own end users.

12.3.21 Single Point of Contact

12.3.21.1 Qwest will provide a single point of contact for CLEC to report maintenance issues and trouble reports seven days a week, twenty-four hours a day. A single 7X24 trouble reporting telephone number will be provided to CLEC for each category of trouble situation being encountered.

12.3.22 Network Information

12.3.22.1 Qwest maintains an information database, available to CLEC for the purpose of allowing CLEC to obtain information about Qwest's NPAs, LATAs, Access Tandems and ~~Central Offices~~ central offices.

12.3.22.2 This database is known as the ICONN database, available to CLEC via Qwest's Web site.

12.3.22.3 CPNI information and NXX activity reports are also included in this database.

12.3.22.4 ICONN is updated every two weeks.

12.3.23 Maintenance Windows

12.3.23.1 Generally, Qwest performs major switch maintenance activities off-hours, during certain "maintenance windows".

12.3.23.2 Generally, the maintenance window is between 10:00 p.m. through 6:00 am Monday through Friday, and Saturday 10:00 p.m. through Monday 6:00 am, Mountain Time.

12.3.23.3 Although Qwest normally does major switch maintenance during the above maintenance window, there will be occasions where this will not be possible.

12.3.23.4 Planned generic upgrades to Qwest switches are included in the ICONN database, available to CLEC via Qwest's Web site.

Section 17.0 - BONA FIDE REQUEST PROCESS

17.1 Any request for Interconnection or access to an Unbundled Network Element or ancillary service that is not already available as described in other sections of this Agreement shall be treated as a Bona Fide Request (BFR). Qwest shall use the BFR Process to determine the terms and timetable for providing the requested Interconnection, access to UNEs or ancillary services, if available, and the technical feasibility of new/different points of Interconnection. Qwest will administer the BFR Process in a non-discriminatory manner.

17.2 A BFR shall be submitted in writing and on the appropriate Qwest form for BFRs. CLEC and Qwest will work together to prepare the BFR form. This form shall be accompanied by the non-refundable Processing Fee specified in Exhibit A of this Agreement. The form will request, and CLEC will need to provide, the following information, as well as, any additional information that may be helpful in describing and analyzing CLEC's request:

- (a) a technical description of each requested Network Element or new/different points of Interconnection or ancillary services;
- (b) the desired interface specification;
- (c) each requested type of Interconnection or access;
- (d) a statement that the Interconnection or Network Element or ancillary service will be used to provide a Telecommunications Service;
- (e) the quantity requested;
- (f) the specific location requested;
- (g) if the requested Unbundled Network Element is a proprietary element as specified in Section 251(d)(2) of the Act, CLEC must submit documentation that demonstrates that access to such Network Element is necessary, that the failure to provide access to such Network Element would impair the ability of CLEC to provide the services that it seeks to offer, and that CLEC's ability to compete would be significantly impaired or thwarted without access to such requested proprietary element; and
- (h) if the requested Unbundled Network Element is a non-proprietary element as specified in Section 251(d)(2) of the Act, CLEC must submit documentation that demonstrates that denial of access to such non-proprietary Unbundled Network Element would impair the ability of CLEC to provide the services that it seeks to offer, and that CLEC's ability to compete would be significantly impaired or thwarted without access to such Unbundled Network Element.

17.3 Within fifteen (15) calendar days of its receipt, Qwest shall acknowledge receipt of the BFR and in such acknowledgment advise CLEC of missing information, if any, necessary to process the BFR. Thereafter, Qwest shall promptly advise CLEC of the need for any additional information required to complete the analysis of the BFR.

17.4 Within twenty-one (21) calendar days of its receipt of the BFR and all information necessary to process it, Qwest shall provide to CLEC ~~an preliminary analysis~~ of the BFR. The ~~preliminary analysis~~ shall specify Qwest's conclusions as to whether or not the requested Interconnection or access to an Unbundled Network Element complies with the unbundling requirements of the Act.

17.5 If Qwest determines during the twenty-one (21) day period that a BFR does not qualify as an Unbundled Network Element or Interconnection or ancillary service that is required to be provided under the Act, Qwest shall advise CLEC as soon as reasonably possible of that fact, and Qwest shall promptly, but in no case later than ten (10) calendar days after making such a determination, provide a written report setting forth the basis for its conclusion.

17.6 If Qwest determines during the twenty-one (21) day period that the BFR qualifies under the Act, it shall notify CLEC in writing of such determination within ten (10) calendar days.

17.7 As soon as feasible, but in any case within forty-five (45) calendar days after Qwest notifies CLEC that the BFR qualifies under the Act, Qwest shall provide to CLEC a BFR quote. The BFR quote will include, at a minimum, a description of each Interconnection, Network Element, and ancillary service, the quantity to be provided, any interface specifications, and the applicable rates (recurring and nonrecurring) including the separately stated development costs and construction charges of the Interconnection, Unbundled Network Element or ancillary service and any minimum volume and term commitments required, and the timeframes the request will be provisioned.

17.8 A CLEC has thirty (30) business days upon receipt of the BFR quote, to either agree to purchase under the quoted price, cancel its BFR, or seek mediation or arbitration.

17.9 If CLEC has agreed to minimum volume and term commitments under the preceding paragraph, CLEC may cancel the BFR or volume and term commitment at any time, but in the event of such cancellation CLEC will pay Qwest's reasonable development costs incurred in providing the Interconnection, Unbundled Network Element, or ancillary service to the extent that those development costs are not otherwise amortized.

17.10 If either Party believes that the other Party is not requesting, negotiating or processing any BFR in good faith, or disputes a determination or quoted price or cost, it may seek arbitration pursuant to the Dispute Resolution provision of this Agreement.

17.11 All time intervals within which a response is required from one Party to another under this Section are maximum time intervals. Each Party agrees that it will provide all responses to the other Party as soon as the Party has the information and analysis required to respond, even if the time interval stated herein for a response is not over.

17.12 In the event a CLEC has submitted a request for an Interconnection, a network element or any combination thereof and Qwest determines in accordance with the provisions of this Section 17 that the request is technically feasible, subsequent

requests or orders for the identical type of Interconnection, network element or combination by that CLEC shall not be subject to the BFR Process. To the extent Qwest has deployed an identical network element or combination under a previous BFR, a subsequent BFR shall be not required. Qwest may only require CLEC to complete a CLEC questionnaire before ordering such network elements or combinations thereof. ICB Pricing and intervals will still apply for requests that are not yet standard offerings. For purposes of this Section 17.12, an "identical" request shall be one that is materially identical to a previous request with respect to the information provided pursuant to Subsections (a) through (f) of Section 17.2 above.

Section 18.0 - AUDIT PROCESS

18.1 "Audit" shall mean the comprehensive review of:

18.1.1 Data used in the billing process for services performed, including reciprocal compensation, and facilities provided under this Agreement; and

18.1.2 Data relevant to provisioning and maintenance for services performed or facilities provided by either of the Parties for itself or others that are similar to the services performed or facilities provided under this Agreement for Interconnection or access to unbundled loops, ancillary and finished services.

18.1.3 "Examination" shall mean an inquiry into a specific element of or process related to the above. Commencing on the Effective Date of this Agreement, CLEC may perform Examinations as CLEC deems necessary.

18.2 The data referred to above shall be relevant to any performance indicators that are adopted in connection with this Agreement, through negotiation, arbitration or otherwise. This Audit shall take place under the following conditions:

18.2.1 Either Party may request to perform an Audit.

18.2.2 The Audit shall occur upon thirty (30) business days written notice by the requesting Party to the non-requesting Party.

18.2.3 The Audit shall occur during normal business hours.

18.2.4 There shall be no more than two Audits requested by each Party under this Agreement in any 12-month period. Either Party may audit the other Party's books, records and documents more frequently than twice in any 12-month period (but no more than once in each quarter) if the immediately preceding audit found previously uncorrected net variances, inaccuracies or errors in invoices in the audited Party's favor with an aggregate value of at least two percent (2%) of the amounts payable for the affected services during the period covered by the Audit.

18.2.5 The requesting Party may review the non-requesting Party's records, books and documents, as may reasonably contain information relevant

to the operation of this Agreement.

18.2.6 The location of the Audit shall be the location where the requested records, books and documents are retained in the normal course of business.

18.2.7 All transactions under this Agreement which are over twenty-four (24) months old will be considered accepted and no longer subject to Audit. The Parties agree to retain records of all transactions under this Agreement for at least 24 months.

18.2.8 Each Party shall bear its own expenses in connection with conduct of the Audit or Examination. The requesting Party will pay for the reasonable cost of special data extractions required by the Party to conduct the Audit or Examination. For purposes of this Section, a "Special Data Extraction" means the creation of an output record or informational report (from existing data files) that is not created in the normal course of business. If any program is developed to the requesting Party's specification and at that Party's expense, the requesting Party will specify at the time of request whether the program is to be retained by the other Party for reuse for any subsequent Audit or Examination. ~~occasioned by the Audit, provided that the expense of any special data collection shall be born by the requesting Party.~~

18.2.9 The Party requesting the Audit may request that an Audit be conducted by a mutually agreed-to independent auditor. Under this circumstance, the costs of the independent auditor shall be paid for by the Party requesting the Audit.

18.2.10 In the event that the non-requesting Party requests that the Audit be performed by an independent auditor, the Parties shall mutually agree to the selection of the independent auditor. Under this circumstance, the costs of the independent auditor shall be shared equally by the Parties.

18.2.11 The Parties agree that if an Audit discloses error(s), the Party responsible for the error(s) shall, in a timely manner, undertake corrective action for such error(s). All errors not corrected within thirty (30) business days shall be ~~escalated to the Vice-President level~~ resolved pursuant to the Dispute Resolution Process.

18.2.12 Neither the right to examine and audit nor the right to receive an adjustment will be affected by any statement to the contrary appearing on checks or otherwise, unless the statement expressly waiving the right appears in writing, is signed by the authorized representative of the Party having that right, and is delivered to the other Party in a manner sanctioned by this Agreement.

18.2.13 This Section will survive expiration or termination of this Agreement for a period of two years after expiration of termination of the Agreement.

18.3 All information received or reviewed by the requesting Party or the independent auditor in connection with the Audit is to be considered Proprietary

Information as defined by this Agreement. The non-requesting Party reserves the right to require any non-employee who is involved directly or indirectly in any Audit or the resolution of its findings as described above to execute a nondisclosure agreement satisfactory to the non-requesting Party. To the extent an Audit involves access to information of other competitors, CLEC and Qwest will aggregate such competitors' data before release to the other Party, to insure the protection of the proprietary nature of information of other competitors. To the extent a competitor is an affiliate of the Party being audited (including itself and its subsidiaries), the Parties shall be allowed to examine such affiliates' disaggregated data, as required by reasonable needs of the Audit.

Section 19.0 - CONSTRUCTION CHARGES

19.1 All rates, charges and initial service periods specified in this Agreement contemplate the provision of network Interconnection services and access to unbundled loops or ancillary services to the extent existing facilities are available. Except for modifications to existing facilities necessary to accommodate Interconnection and access to unbundled loops or ancillary services specifically provided for in this Agreement, Qwest will consider requests to build additional or further facilities for network Interconnection and access to unbundled loops or ancillary services, as described in the applicable section of this Agreement.

19.2 All necessary construction will be undertaken at the discretion of Qwest, consistent with budgetary responsibilities, consideration for the impact on the general body of end users and without discrimination among the various carriers.

19.3 A quote for CLEC's portion of a specific job will be provided to CLEC. The quote will be in writing and will be binding for ninety (90) business days after the issue date. When accepted, CLEC will be billed the quoted price and construction will commence after receipt of payment. If CLEC chooses not to have Qwest construct the facilities, Qwest reserves the right to bill CLEC for the expense incurred for producing the engineered job design.

19.4 In the event a construction charge is applicable, CLEC's service Application Date will become the date upon which Qwest receives the required payment.

Section 20.0 - SERVICE PERFORMANCE

20.1 Qwest is currently developing performance measures in a Qwest workshop process being conducted by the Commission. Qwest will become bound by the newly developed performance measures on the date of the Commission order implementing the same and amend this Agreement when the Commission's Performance Measures Effort is complete, to incorporate all aspects of the Commission's final decision.

Section 22.0 - SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives.

(CLEC)

Qwest Corporation

Signature

Signature

Name Printed/Typed

Name Printed/Typed

Title

Title

Date

Date

EXHIBIT

LBB 2

**Qwest
Wholesale Markets
Special Request Application Form**

Request Application - Special Request Process

This application is to be used to request additional switch features, nonstandard combinations of UNEs or other requests as defined below that do not require a comprehensive technical feasibility analysis. Specific requirements and timeframes for evaluating your request are listed below.

Please complete the application form in full and submit it to your Qwest account team representative (ATR) via email mail or fax. All applicable sections must be completed before Qwest can begin processing your request. Please use additional pages as necessary.

Requested By _____

Company Name _____

Address _____

Email _____

Primary Contact Name, Telephone Number, Fax Number and Email

Date of Request

Date Received (Completed by Qwest ATR)

Please indicate the type of request (X) and provide any additional information that would be useful in evaluating your request.

☐ Requesting specific product feature(s) be made available by Qwest that are currently available in a switch, but which are not activated.

☐ Requesting specific product feature(s) be made available by Qwest that are not currently available in a switch, but which are available from the switch vendor.

☐ Requesting a combination of Unbundled Network Elements that is combined in the Qwest network but is not currently offered by Qwest as a standard Wholesale product.

☐ Unbundled network elements (UNEs) to which Qwest is obligated by the FCC to provide unbundled access, but for which Qwest has not created a standard product, such as UDIT and EEL between OC-3 and OC-192.

**Qwest
Wholesale Markets
Special Request Application Form**

1. Please provide a detailed description of each requested feature, unbundled network element or nonstandard combination of UNEs. Please attach a drawing or illustration, as appropriate.

2. Please identify the desired interface specifications, if applicable, for the requested feature, unbundled network element or nonstandard combination of UNEs.

3. Please identify the specific Qwest location, (e.g. wire center, CLLI code, NPA, NNX, V&H coordinates) and quantity for each requested feature, unbundled network element or nonstandard combination of UNEs. Quantities should include: number of lines, trunks, units, etc.

4. Please identify your specific location for this request; e.g., street address and cross-street information. If necessary, please include a map or diagram.

5. Please identify the type of equipment you plan to interconnect to the Qwest network, if applicable.

**Qwest
Wholesale Markets
Special Request Application Form**

6. Please provide any additional information that would be useful in evaluating your request.

Following are the standard response timeframes:

Acknowledge receipt of request within 5 business days of receipt.

Respond with a preliminary analysis within 15 business days of receipt of request.

In extraordinary circumstances, CLEC and Qwest may need to negotiate other reasonable timeframes for delivery of the preliminary analysis.

A reasonable timeframe for further deliverables will be negotiated between CLEC and Qwest based on the nature of the request.